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Cappellaris
Matth.
Tractatus
Theol. Moral.

1392

TRACTĀUS THEOLOGIĘ MORALIS.

TOMUS PRIMUS

DE OBIECTO DOMINII,
TUM DE RESTITUTIONE IN GENERE,
ET IN SPECIE,
SCRIPTUS

A IOANNE BAP̄TA DE CANDIDO
IN SEMINARIO UTINENSIS,
PROFESSORE REUERENDM̃O
MATTHIA CAPELARIS
DE CARNEA.

MDCCLXXXVII.

Articulus II.
De objecto Dominij.

Objectum, seu materia Dominij ea bona dicuntur, quae sub hominis potestate cadunt. Cadunt autem sub hominis potestate res caeterae inferiores, hominis usibus subjectae, ut agri, montes, flumina, plantae, metalla, bestiae, et similia. Deus ipse dominium rerum terrenarum homini contulit juxta illud Psalmi 8vi: omnia subjecisti sub pedibus ejus.

Dominium hoc proficiscitur ex ipso jure naturae, habet enim homo a natura potestatem ... disponendi de hujusmodi rebus in suum proprium commodum. Veruntamen licet homo jure naturae dominium habeat in res inferiores, hoc tamen non est ita intelligendum, quasi singuli haberent completum dominium a natura, sed jus quod natura cuique in res inferiores impertit, est, ut homo earundem rerum absolutum Dominium consequi, quisque occupare, et sibi vindicare valeat, nisi prius ab aliis occupatae fuerint.

Hinc inquires primo, utrum, et quodnam dominium homo habeat vitae suae, et membrorum.

Resp.o Solum Deum esse dominum vitae, et membrorum hominis, hominem autem in vitam suam, et membra dominium indirectum, et utile habere. Prob. pars prima ex illo Sapientiae 16. tu es Domine qui vitae, et mortis potestatem habes. Idem etiam Gentiles Philosophi docuerunt, nam Cicero de senect. refert, Pythagoram dixisse nemini fas esse injussu imperatoris summi Dei de praesidio, et statione vitae decedere. Id ipsum probatur etiam ratione, dominium enim non est nisi in res ...

quas

quas nostra industria comparare possumus, atqui vitam propria industria acquirere nemo potest. ergo etc.

Quod si homo non est dominus vitae suae, neque membrorum suorum dominus esse potest. Nam homo est omnes partes simul quibus constat. sed qui dominio totius caret, a dominio etiam partium caret necesse est.

Prob. 2da pars. Homo sine cujuspiam injuria potest vita et membris uti ad usum quem lege permissum, et vero homini libero infert injuriam, qui illum vult ab hujusmodi usu impedire. ergo etc. Hinc fit, ut homo se ipsum vendere queat: hinc vir potestatem acquisivit in corpus uxoris, et vicissim.

Coroll. Neque Respublica vel Princeps dominium habet vitae suorum subditorum. Hoc enim solus Deus habet, qui cum solus hominem condiderit, ad illum solum pertineat eum pro arbitrio destruere, et occidere. Princeps tamen, aut Respublica possunt malefactores de medio tollere, et exponere vitam subditorum in bello. id enim faciunt non ut vitae domini, sed ut custodes tranquillitatis, et boni publici: quemadmodum homo, ut custos vitae suae potest resecare membrum putridum, et perdere partem pro salute totius.

Inquires 2do, utrum homo habeat famae suae dominium. Resp. Aff. Nam ille est famae dominus, cui conveniunt praecipui actus dominii circa famam. Atqui homini conveniunt praecipui actus dominii circa famam propriam. Potest enim homo famam propria industria, et virtute sibi acquirere, et augere, ablatam potest in judicio repetere ut rem suam proprio nomine. potest denique restitutionem ejus sine cujuspiam injuria remittere. Unde S. Thomas quaest. 73 Art. 4 ad primum docet, in arbitrio uniuscujusque

est

cum patitur detrimentum suæ famæ, nisi id vergit in alterius [seu] nocumentum.
Obstat autem hoc famæ detrimentum pati juxta de causa ex. gr.
ut de se ceteri demisse sentiant, ut spiritum superbiæ deprimat,
ut restituat famam alteri, ut divinam misericordiam commendet; qua
ratione confitetur Apostolus se blasphemum fuisse, et dicit Augustinus
se in libidinum lutis turpiter ac diu volutatum esse. E contrario se-
ipsum infamare non licet primo sine rationabili causa, hoc enim contra
rectam rationem foret: secundo cum id vergit in nocumentum alterius. Ver-
git autem primo quando ex nostra aliorum infamia sequitur: sic fa-
ma superioris, et Prelati læ di potest, qui in communitatem
quædam infamiæ redundet. Secundo cum ex violatione propriæ famæ scanda-
lum proximi oritur, atque hoc maxime locum habet in ministris eccle-
siæ, qui semper meminisse debent illius dicti S. Augustini libro de
bono viduitatis cap. nobis necessaria est vita nostra, aliis fama
nostra. Nostra quippe fama necessaria est, ut laicis prestemus officium,
quod iis stricto jure debetur; quemadmodum fama Episcopi Paro-
chi etc. necessaria est ut recte regant populum. Juxta multos contra justi-
tiam delinquit Episcopus, aut Parochus ille, qui seipsum infamat, non
quod precise se fama privat, sed quod populo nocet vel infamiam
inferens, vel se reddens ineptum ad exhibendum debitum officium. Qui vero
ex sola caritate proximo prodesse tenetur, et per infamiam ad hoc ineptus
redditur, is si se ipsum infamet, solum contra charitatem peccat: sicuti pec-
cat contra charitatem, qui eam pecuniam prodigit, qua juvare pauperes
potest.

Objicies primo illud ecclesiastici 41. curam habe de bono
nomine. Nihil ergo illud argumentum valet, bonæ famæ suæ dominum
esse, quia potest suam famam despicere.

Resp. ex testimonio scripturæ id solum colligi, non licere fa-

mam

negligere sine legitima causa. Ex hoc tamen non consequitur hominem non esse ejus dominum. Nam quamvis sit dominus pecuniæ, et tamen sine justa causa profundi non debet.

Objicies 2do. Condonare membri mutilationem possumus, cujus nullum dominium habemus. Ergo a pari possumus famæ nobis restituendæ obligationem remittere, licet famæ dominium non habeamus.

Resp. distinguendo antecedens. Possumus condonare mutilationem secundum quod concedo: secus nego antecedens. Habemus dominium indirectum et utile membrorum, et secundum hoc possumus reparationem membri mutilati non exigere, seu condonare possumus satisfactionem pro injuria illata, et restitutionem pecuniariam pro damno secuto. At vero si membrum secundum se restitui queat, non potest ille cui membrum abscissum est, restitutionem ejus remittere; quia hoc perinde esset ac membrum quasi iterato abscindere, quod omnino non licet. Porro ita non se res habet cum agitur de fama, hæc enim secundum se restitui potest, ac proinde verum illius dominium habere oportet, qui ejus restituendæ obligationem remittit.

Inquires 3tio. An homo alius hominis dominus esse queat, seu an liceat homini hominem servum facere, et habere.

Quædam ante responsum adnoto. Primum jure naturæ homo non habet dominium in alterum hominem. Omnes enim homines sunt naturæ conditione pares, cum sint eadem essentia præditi, ex eodem parente procreati, atque ad eundem finem conditi. Neque tamen servitus cum naturali jure pugnat. Nam homo ut dictum est habet dominium utile membrorum suorum. Atqui natura non prohibet, ut qui tale dominium habet, vel ipsum transferat in alium per voluntariam servitutem, vel per servitutem necessariam illud amittat

[illegible] [illegible] [illegible] [illegible] [illegible] veritates asservitute [illegible] aut [illegible] e Romana. [illegible] [illegible] movet [illegible] [illegible] stiano [illegible] ed encre christi[illegible].

[illegible] [illegible] quaestio [illegible] respondet affirmative, ut ex scripturis ipsa [illegible] [illegible] Levit. [illegible] Deuteronomii 20, et [illegible] de variis servitutis generibus praescribit, et [illegible] [illegible] hortatur [illegible] ut quicunque sunt [illegible] servi, dominos [illegible] dignos arbitrentur. Eadem de causa ille [illegible] [illegible] Philemonis servum ad ipsum remittit [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] juri canonici de servis christianis [illegible] discernuntur [illegible] causa [illegible] quaest. 2. capite [illegible] [illegible] [illegible].

Aliquis vero [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ratione [illegible] [illegible] [illegible] [illegible] jus belli justi communi [illegible] consuetudine [illegible] [illegible] [illegible] [illegible] [illegible] in bello captivo [illegible] [illegible] in servum sibi vindicat, sicut [illegible] ex lege hostes [illegible] de captivis. [illegible] huius institutio ex [illegible] consensione [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] tamen, [illegible] [illegible] [illegible] sed servari [illegible] morte in servitute mutata, [illegible] et [illegible] [illegible] [illegible] sicut [illegible] S. Augustinus monuit exterius [illegible] [illegible] ad [illegible] [illegible] et [illegible] [illegible] [illegible], [illegible] tametsi [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] hostilis [illegible] [illegible] [illegible] [illegible] ita et [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] externis

Secundus servitutis titulus [illegible] nativitas [illegible] [illegible]

tris

natris ancillę, servus servo est, quamvis genitorem liberę condi-
tiones habeat. Bartus et sequitur veritatem [illegible] lex [illegible]
c. de rei vindicatione. sic autem in jure statutum est quia ma-
ter est certa et [illegible] pater: servitus
autem non animam sed corpus afficit.

Sextus titulus est condemnatio [illegible], scilicat
[illegible] propter comissa crimina [illegible] a
legitimo [illegible] morte [illegible] sic
[illegible] seu civilis mors est

[illegible] titulus [illegible] Nam [illegible] liber-
tat [illegible] fame et pecunię [illegible]
[illegible] liberi [illegible] B. Paulini Nolani
[illegible] in servum voluit ut filium viduę [illegible]
[illegible] ut hęc libertatis venditio sit [illegible] de-
bet succedere [illegible] causa, alioquin [illegible]
[illegible] bonis fortunę et famę [illegible] jure [illegible] pa-
rentes non possunt [illegible] non emancipatos vendere [illegible]
[illegible] ex cap. [illegible] Ratio est quia [illegible]
[illegible] ac veluti pars patris [illegible] unde [illegible]
[illegible]
[illegible]
[illegible] sint tamen [illegible]
[illegible]
[illegible] venat [illegible]
[illegible] lex [illegible]
[illegible] li-
bertatem valeat [illegible]

tor jus quod genitori [illegible], non [illegible] jus [illegible]
ad genitricem extendi.

[illegible] ex his titulis acquisiti, inservos [illegible] non [illegible]. Unde S. Thomas, et [illegible] non [illegible] et fraude [illegible] matrimonio [illegible] posset tamen [illegible] liber [illegible] [illegible] domino [illegible] dominus [illegible] ex [illegible] causa 29. quest. [illegible]

[illegible] quid [illegible] servum [illegible] absolutum, ut fugere servo non liceat?

[illegible] servum fugere [illegible] nocere [illegible] a suis dominis, quando [illegible] sit, imo quando potest [illegible] si [illegible] ex [illegible] nocere ex [illegible] christiani a turcis [illegible] spoliare et [illegible] [illegible] si inhumaniter [illegible] [illegible] qua [illegible] mala [illegible] [illegible]

[illegible] matris ancilla, non [illegible] [illegible] [illegible] vendi [illegible]

ien

[illegible], quia servi [illegible], [illegible]
vel conditione gentis [illegible] [illegible] promissis nec [illegible]
[illegible] injuria violare. Ex communi sententia [illegible]
[illegible] in [illegible] justo [illegible]
[illegible] justa sententia [illegible] ejus generis sit, ut
non [illegible] per [illegible]. [illegible]
[illegible] pacem [illegible] illa val-
[illegible] probabile [illegible] servi [illegible] in-
[illegible] possit, contrarium adminis
[illegible] iniquitate [illegible].

[illegible] difficultas [illegible] bello capt.
[illegible] hominum et ejus [illegible]
ad extraneos [illegible] atque in statum [illegible] restituendo [illegible]
se [illegible] promisserint
servituram [illegible]
[illegible] eos qui [illegible] bello [illegible]
[illegible], ad nos [illegible] pretio [illegible]
[illegible]

[illegible] isto servos qui [illegible] justi sunt esse [illegible]
[illegible], non tamen dominis [illegible]
[illegible]
[illegible] potestate [illegible]
[illegible]
[illegible] non debet [illegible]
[illegible]
[illegible] venit [illegible]
[illegible] ut vellent
[illegible]

pro iis servis pretium, qui [illegible] [illegible] qua libertate [illegible]
[illegible]
[illegible] coronam.

[illegible] donec ad suos pervenerint [illegible]
[illegible] etiamsi [illegible]
[illegible] justa [illegible]

[illegible] contra [illegible] Non licet [illegible]
possessione privare. [illegible] servus [illegible] contra [illegible]
[illegible] justo et superiori bello titulo [illegible]

[illegible]
[illegible]
[illegible]
in statu pristino [illegible] jus in servos habent, ut
[illegible] retineant, et fuga [illegible] ejiciant, jus tamen non habent
[illegible] occasione non [illegible] in genere
[illegible]
[illegible] suo et [illegible]

[illegible]
[illegible]
[illegible]
non [illegible] etc.

[illegible]
[illegible] aut [illegible]
[illegible] ille vero [illegible] servitute, quae longe
minus ignominiosa [illegible]

[illegible] alliis [illegible] respondet, neu [illegible] nisi [illegible] fugere [illegible], licet in [illegible] aut [illegible], aut [illegible] [illegible] non [illegible] sed [illegible] debet [illegible], ut illi [illegible] [illegible] nulla lex humana [illegible] facere [illegible] mors sequatur.

Art. III.
De [illegible] acquirendi dominii.

[illegible] dominii [illegible] occupatio, et [illegible] tio, et [illegible] modos [illegible] divisio, et dominiorum distinctio. [illegible] [illegible] ve- nientes [illegible] alicui [illegible] eande- [illegible] ante [illegible] [illegible] eandem [illegible] [illegible] ut [illegible] ex [illegible] [illegible]

[illegible] oratione [illegible] [illegible] in vita nostra [illegible] [illegible] tamen [illegible] minime [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] dis [illegible] [illegible] [illegible] [illegible]

na, quod attullimus supra [illegible] [illegible]. Possessiones [illegible]
licet inculta relicta [illegible] [illegible] [illegible]
communia, et maxime curent premia [illegible] nostro [illegible] et [illegible]
[illegible] [illegible] et [illegible]
mechanicæ requirunt hujusmodi [illegible] ab aliis hominibus [illegible].
[illegible] [illegible] [illegible] la-
[illegible] [illegible] [illegible] [illegible] [illegible]
ta [illegible] velut [illegible] [illegible] dominiis e
ventura fuisse putanda est. [illegible] [illegible] [illegible], et [illegible]
[illegible] plures [illegible], se [illegible] et
et [illegible] [illegible] [illegible] [illegible]
[illegible] et ita [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] visit [illegible]
Cap 2.

[illegible] [illegible], et [illegible] quod [illegible]
[illegible] [illegible] hujusmodi [illegible]
[illegible] qui [illegible] in [illegible] quæ illud [illegible] [illegible]
aut [illegible] [illegible] [illegible], ut [illegible]
ma etc. [illegible] [illegible] per [illegible]. Bonorum quæ [illegible]
nunt vel e [illegible], ut thesauri, [illegible] ut [illegible]
derelicta, aut [illegible] amissa, dominium adipiscimur per inventionem. [illegible]
[illegible] bona sunt, quæ dominum habent et [illegible] [illegible]
[illegible] in aliud [illegible] transferri per [illegible]. [illegible]
[illegible] nobis est de [illegible] dominii [illegible] per occupatione
[illegible] per inventione, [illegible] per præscriptione [illegible] [illegible]
[illegible] dominii [illegible] [illegible].

Sect I

De occupatione.

[illegible] ... naturalia [illegible] ... domestica [illegible] ... aliæ naturaliter [illegible] mansuetæ sunt, ut oves, capræ, [illegible] aliæ natura sua ferè sylvestres sunt, sed hominum industria mansuescunt, ut accipitres, cervi [illegible] ... aliæ [illegible] ... aut ex [illegible] ... ut [illegible] ... [illegible] ... sylvestres [illegible].

[illegible] animalia naturaliter [illegible] ... domestica [illegible] ... [illegible].

[illegible] ... ut [illegible] ... animalium [illegible] ... dominium [illegible] ... possent, quia conse- [illegible] ... [illegible] ... mansueta sint et domes- [illegible] ... [illegible] ... [illegible] ... [illegible] ... [illegible] ... [illegible].

[illegible]

[illegible]

[illegible] ... quas [illegible] ... [illegible] ... [illegible] ... perversis [illegible].

[illegible]

[illegible]

[illegible]

[illegible] illorum [illegible]

[illegible]

pertrahit, peccat et restitutioni [illegible] gravi [illegible]

[illegible] collusiones [illegible]

[illegible]

[illegible] Tamen hoc ob commune bonum [illegible]

[illegible] pet. privati. [illegible] illis [illegible]

[illegible]

[illegible] aut [illegible] instituti.

[illegible]

sepe

[illegible]

[illegible] ledo [illegible] sit [illegible]

[illegible] tamen [illegible]

at [illegible] sit eius [illegible]

[illegible]

[illegible] lex [illegible]

[illegible]

[illegible] cum non [illegible]

[illegible]

[illegible]

[illegible] casiendis [illegible]

[illegible] aut [illegible]

[illegible] vel [illegible]

[illegible]

[illegible] aeres [illegible] [illegible]

[illegible] 64. [illegible] incommod[illegible] [illegible]

[illegible] abiisse

[illegible] Ill. [illegible] [illegible]

[illegible] [illegible]

[illegible]

[illegible]

[illegible] ex [illegible]

Arion et Modestia [illegible]

[illegible] manib. [illegible]

[illegible] inter [illegible]

[illegible] XIV [illegible]

[illegible] usque [illegible]

[illegible]

[illegible]

[illegible]

[illegible] in [illegible]

[illegible]

[illegible]

[illegible] ita tunc [illegible] soli

[illegible]

[illegible] inter [illegible] tamen [illegible]

[illegible]

[illegible] et [illegible]

[illegible]

[illegible] S. Raimundo non [illegible]

[illegible] sive [illegible]

[illegible] Quanto vero et [illegible]

[illegible] opera, [illegible]

[illegible] in hac tanta [illegible] et [illegible].

[illegible] spectare debent: frequentius [illegible] ab oratione [illegible] [illegible]

[illegible] venationes acquisitae, et piscationes [illegible] in [illegible] juris, [illegible] [illegible] imo ipsa Respublica [illegible] de Principe [illegible] hoc privilegium [illegible] Princeps [illegible] plures pro communi [illegible] et utilitati [illegible] [illegible] reservare [illegible] pertineat consuetudine, [illegible] legitime praescripta [illegible] Princeps [illegible] hujusmodi [illegible] privilegii, et legis habet, [illegible] sic [illegible] praescriptione [illegible].

[illegible] Princeps [illegible] [illegible] [illegible] [illegible] praeceteris [illegible]. [illegible] Princeps caveat ne [illegible] multiplicatione [illegible] pernicies [illegible] [illegible] conveniunt reservari [illegible] Princeps [illegible] assignavit.

[illegible] qui [illegible]

[illegible]

[illegible] et [illegible]

[illegible]

desuetudine cessarint, tum denique quod materia lucris communiter et piscatio aucupium et venatio quam [illegible] etiam tempore [illegible] quod [illegible] non [illegible] est. Quod si gravia damna inferat [illegible] si enim in flumen [illegible] missa [illegible] aqua, ex quanto hausta pisces moriant, [illegible] et [illegible] [illegible] [illegible], et Directores damnum [illegible] [illegible] forent. Videndum [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ea quantitate [illegible] quod alia solent [illegible] [illegible] [illegible] sint [illegible] et in [illegible] capiant. Notat Lassius [illegible] venatores [illegible] compensare, [illegible] intelligit, damna excusari posse, quod [illegible] hujusmodi restitutione minime curat, sed illud satis est, ut venator qui deprehenditur, poenam luat.

Peccant pariter qui [illegible] tempore, [illegible] [illegible] [illegible] [illegible] utilitatis non est, licet communi [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] sit Communitas et non censetur [illegible] [illegible] [illegible] [illegible] mentum afferat.

[illegible]

tribuat. [illegible] [illegible] [illegible] instituit, vel in [illegible] [illegible] ad omnem [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] vitetur sit [illegible] [illegible] [illegible] [illegible] [illegible] que [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] infideta [illegible] [illegible] nulla [illegible] [illegible] obligatio [illegible] [illegible] venatu [illegible] [illegible] afferat [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] detrimenta [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ut [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] paucis privatis [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] habet [illegible] [illegible] contra [illegible] [illegible] [illegible] [illegible] [illegible] prescri-psit. ut bona comunia [illegible] [illegible] distributiva in singulis [illegible] damnum, quod causa boni comunis imponitur, [illegible] [illegible].

[illegible] [illegible] [illegible] [illegible] [illegible] accepimus [illegible] venatores cum canibus, prout occasio tulerit, per media [illegible] sese inferant [illegible] [illegible] [illegible] damni resultat. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ad [illegible] [illegible] [illegible] ipso hic locis [illegible] [illegible] [illegible] [illegible] venatores [illegible] [illegible] tempori [illegible] [illegible].

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] debere de [illegible] [illegible] [illegible] [illegible] memoria hominum antea [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] a venatoribus commonet. [illegible] sationis, sed libere omnino et anima condonandi [illegible] prescriptio in iis, que [illegible] [illegible] [illegible] [illegible] gratia, [illegible] [illegible] [illegible] [illegible] [illegible] tanti tempo-[illegible] [illegible] [illegible] presumptive [illegible] liberi consensus [illegible] [illegible] damna [illegible] [illegible].

[illegible] publice [illegible] [illegible] [illegible] [illegible] sunt, neque sunt fructus silvarum, aut

[illegible]

[illegible] de [illegible] [illegible] occupantis. [illegible] [illegible] [illegible] [illegible] [illegible] quae de suis [illegible] non [illegible] [illegible].

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], et ad [illegible] animalium [illegible] [illegible] [illegible] quae [illegible] [illegible] [illegible] bona animalium habet, quae [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]. Quare [illegible] [illegible] [illegible] [illegible], qui in [illegible] stagno aut [illegible] [illegible] [illegible] vero in [illegible] [illegible] [illegible] [illegible], sed ita [illegible] [illegible] [illegible] difficilius [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] venatores ab [illegible] [illegible] [illegible] [illegible] nam vere inveniunt in tam loco non minus [illegible] liberiore [illegible] quam si circumsepta non essent. Haec [illegible] [illegible] occupatione [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] gena [illegible].

[illegible] Inferiores primo, ex nullius, ac primo primo occupantis sint ge[illegible] [illegible] [illegible], et similia quae in maris littore [illegible] [illegible] [illegible] [illegible] [illegible] reperiuntur.

[illegible] Haec omnia [illegible] [illegible] [illegible] [illegible] [illegible] occupante [illegible] uti declaravit Justinianus [illegible] institu. q. 2. titu. 1. paragrap. [illegible] [illegible]; et gemmae, etc. quae in littore maris inveniuntur [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] tamen [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] in [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible].

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible].

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] non in solo superficie consistit sed in tota [illegible] et non [illegible] [illegible] [illegible] [illegible]

obrui[illegible]

obtinuerit et [illegible] solverit. hujusmodi [illegible] [illegible] ubi [illegible] [illegible] de [illegible] nolens [illegible] excidat.

[illegible] [illegible] metallic[illegible] [illegible] argenti etc. in nullius dominio constituta habeant, ac proinde in dominium primo occupantis evaderent.

[illegible] metallic[illegible] [illegible] in fundo [illegible] particulari [illegible], spectat [illegible] natura ad fenti pertinere ad dominum fundi [illegible] partes, vel [illegible], ut in eo nascantur alii formae. Cum autem Principes hoc jus [illegible] metalla ut privatis [illegible] etiam in alieno fundo [illegible] anno [illegible] infer[illegible] sub capitulo 139 confirmata in [illegible] consulente [illegible] Anno 1488. [illegible] 1670, quae [illegible] formam praescribunt in effodiendis mineralibus [illegible] in Principatu servanda. [illegible] con[illegible] erit [illegible] hac a [illegible] [illegible] permitti eadem [illegible] [illegible].

Sectio II

De modo acquirendi dominii [illegible].

[illegible] pro [illegible] [illegible] et [illegible] [illegible] loca vacantia, et derelicta. [illegible] [illegible] quaestiones [illegible]

[illegible]

[illegible] paulo ante [illegible] aliquid vel [illegible] [illegible] vel custodiae condiderit sub terra non est thesaurus, cujus [illegible] [illegible] [illegible] [illegible] habent [illegible] mobilia ut gemmae, annuli, catenae aureae etc.

[illegible] thesauri in [illegible]

[illegible] inveniri [illegible] jure gentium [illegible] qui dominum thesaurus non habet, ut ex ipsius definitione [illegible] thesauri [illegible] [illegible] libro [illegible] paragrapho 130.

Ad cujus decisionis pleniorem notitiam plura adnotare [illegible] [illegible] thesaurus [illegible] dominium directum [illegible] sit, et inventor directum; alius autem in [illegible] fundi [illegible] thesaurizantes sunt inventoris, et quarta [illegible] illius [illegible] [illegible] media [illegible]

[illegible] aliunde [illegible] [illegible] cedere debet domino fundi [illegible] [illegible]

[illegible] *sacris* [illegible]

[illegible]

[illegible]

[illegible] thesaurum [illegible]

[illegible] *esse, quod multo magis locum habet, quando* [illegible]

[illegible] thesaurum [illegible]

[illegible] thesaurus in loco [illegible]

[illegible] *tamen, intelligunt* [illegible]

[illegible] non autem de loco [illegible] [illegible] ne vix quidem hodie locus sacer extat, qui non sit [illegible] [illegible]

[illegible] etc. [illegible] [illegible]

Qui invenit alicubi thesaurum [illegible], emitque locum ante nescius [illegible] thesauri [illegible]:

Resp. Affirmative eo modo emit illud ex loco pretio [illegible] [illegible] id quod [illegible] thesaurus [illegible], cujus non [illegible] [illegible] [illegible] marcarum [illegible] noscit in herba, ceterorum [illegible] quod cernit in [illegible] [illegible] ergo a pari [illegible].

Dices: non minus peccat contra [illegible] [illegible] thes [illegible] [illegible] latens [illegible]

Bene [illegible] [illegible] secus autem [illegible] pecunia [illegible] [illegible] [illegible] substantia mundi nec pars aut [illegible] eius: unde [illegible] in thesauro non habet nisi [illegible] [illegible].

[illegible]

[illegible] varias [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] sæculari [illegible] [illegible]

[illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] certiores [illegible], si [illegible]

[illegible].

[illegible] [illegible], et alter invenit [illegible]

[illegible]

[illegible]

[illegible]

[illegible] rei [illegible]

[illegible] Concilium [illegible]

[illegible]

[illegible]

[illegible]

[illegible] acquisitione [illegible]

[illegible]

[illegible]

[illegible]

[illegible] si non invenerint [illegible]. Cer-

[illegible] nihil pro inventione retinere aut exigere [illegible]

[illegible]

[illegible]

[illegible]

[illegible] relinquat præmia [illegible]. Sed tamen [illegible] [illegible]

[illegible]

[illegible]

[illegible]

Conclusio.

[illegible] communis sententia.

[illegible]

26

[illegible]

[illegible]

[illegible]

Resp.° negando majorem [illegible] quia thesauri [illegible] non habent, salte[m] [illegible]

[illegible] contra vero [illegible] de se inventis.

[illegible]

[illegible] praesumpta voluntas [illegible]

[illegible] in ejus utilitatem [illegible]

[illegible]

Atque magis [illegible] si res illa [illegible]

[illegible] maneat: vel cujus [illegible] majori facilitate poterit ad inventorem [illegible] [illegible] commode.

Dictum negandum [illegible] ad cujus restitutionem [illegible] in sententia nostra qui [illegible] [illegible] [illegible] ante esse communiter [illegible] ex eorum testamentis [illegible] [illegible] curent [illegible] ad heredes [illegible] veniant, [illegible] in [illegible] credendum. Sin vero nullus [illegible] [illegible] [illegible] et cujus nulla est spes probabilis, bona certe [illegible]. [illegible] amisit ex [illegible] rei perditae distributione [illegible], [illegible] [illegible] [illegible] inveniendi; bonum est admodum incertum ergo etc. Demum in [illegible] [illegible] [illegible] non [illegible], aut alterum [illegible] [illegible] [illegible] [illegible] [illegible] sapiente [illegible] [illegible] reperit [illegible] [illegible] et [illegible], [illegible] [illegible] [illegible] [illegible] remanere [illegible] [illegible], aut [illegible].

Hic tamen animadvertimus velle, res inventas tandiu servandas esse, quandiu spes adsit veri domini inveniendi [illegible] conversationem non [illegible], [illegible] [illegible] et [illegible].

Res inventa et [illegible] [illegible] [illegible] non est [illegible] [illegible], quam [illegible] expediat [illegible] si vere [illegible] [illegible] etiam aut [illegible] [illegible]. [illegible] inventor ipse [illegible] sit [illegible] bonorum inventorum [illegible], imo [illegible] etiam [illegible] [illegible] [illegible] [illegible] bonorum [illegible] [illegible] [illegible] bonorum [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] distribuere [illegible] et retinere [illegible] [illegible] non habet [illegible] [illegible] conditionis [illegible] [illegible] agentes non [illegible] retinere [illegible] [illegible] [illegible] [illegible] [illegible] nisi tanquam [illegible] [illegible] [illegible] in [illegible] judicium [illegible] est sine errandi [illegible] in propria causa [illegible].

Quid si post publicationem inveniat.

[illegible]

[illegible] impieris [illegible]

[illegible]

Resp. [illegible] in contrarium [illegible] [illegible]

[illegible] inveniunt [illegible]

[illegible] invenerit [illegible] vel [illegible] cap. 16 [illegible]

[illegible]

[illegible] iniustitia et in [illegible] [illegible] et [illegible] tenere [illegible] [illegible] ex hac [illegible] [illegible] [illegible] habita [illegible] [illegible] [illegible] licet [illegible] [illegible] extitit tamen [illegible] [illegible] [illegible] [illegible] [illegible] exercuit quidem iniuste [illegible] [illegible]

[illegible] [illegible] pauperes [illegible] [illegible] sententia. De mensis [illegible] [illegible] iniuste [illegible] ex capitulo [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible].

[illegible] quaesita, et [illegible] [illegible] [illegible] iniquis [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] consuetudo [illegible] et quando [illegible] inveniri nequit [illegible] [illegible] melius modo [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] legere [illegible] traderet, vel in [illegible]

[illegible] nobis leges conjugales [illegible].

[illegible] bonum ea ratione seu animo [illegible]

[illegible] Sed animadvertendum est, in [illegible] ut ex certis [illegible] retinere [illegible]

[illegible] haberi [illegible] bona [illegible].

[illegible] haberi [illegible]

[illegible] non est [illegible]

[illegible] aliunus [illegible] animo abjicit [illegible] habere volit [illegible] verendum fuere [illegible] et qui res ipsas [illegible] animo [illegible] [illegible] committit [illegible] [illegible] in horto [illegible] [illegible] recurrens [illegible]

[illegible] sine sententia [illegible] bonus [illegible] propter [illegible] [illegible] at, vel magna expensa subeunda sint.

[illegible] quis [illegible] [illegible] [illegible]

Resp. [illegible] ex [illegible] de re. [illegible], ex [illegible] [illegible] ex [illegible] XX et [illegible] XXI [illegible] de equis. [illegible] res [illegible] nostra [illegible] [illegible] reverterit.

[illegible] quo carens: [illegible] [illegible] [illegible]

3.

[illegible] sauae [illegible] [illegible] [illegible]
[illegible] substantiis modo [illegible] [illegible]
[illegible] [illegible] fuerit exonere. ut quandoque
[illegible] Dominiae solvari. et industria
[illegible]
[illegible] nihil [illegible] ratione personali concessam
est.

Sectio III

De [illegible]
absq. ejus consensu, seu de praescriptione.

Postquam egimus de acquisitione [illegible] quae nullius, aut quasi nullius erant, ordo postulat, ut de acquisitione earundem rerum [illegible] quae alterius erant [illegible] [illegible] [illegible] de [illegible] aut [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] Theologo [illegible] [illegible] [illegible] [illegible] [illegible] sententia [illegible] [illegible] auctoritate [illegible] [illegible]

[illegible]

[illegible] alteruy vel sub jure aliquo [illegible]
[illegible] possedisse toto tempore [illegible]
[illegible] [illegible]
[illegible] necessario [illegible]: unde [illegible]
[illegible]
[illegible] temporis [illegible]
[illegible] Dominium [illegible]
[illegible] esse [illegible] tempore [illegible]
[illegible]
[illegible] ex [illegible]
[illegible]

[illegible] acquisitio Dominii [illegible]
[illegible] hisce praescriptionis [illegible]
[illegible] praescriptionis [illegible]

Hactenus de ipso nomine [illegible]
[illegible] praescriptio acquisitio Dominii [illegible]
[illegible] tempore a lege [illegible]
[illegible]
[illegible] ad [illegible] praescriptio [illegible]
[illegible] titulus [illegible]
[illegible]
[illegible]
[illegible]

[illegible]
[illegible]

Possessio definitur [illegible]

[illegible]

[illegible]

[illegible] Quare omnes eas appre[illegible]

[illegible] in rebus incorporeis, ut beneficium, [illegible]

[illegible] apprehendi [illegible]

[illegible] animus humani [illegible]

[illegible] animi [illegible]

[illegible] tamen non [illegible]

[illegible] possessioni [illegible] definiti [illegible] et [illegible]
[illegible] non excludit et [illegible] in [illegible] licet [illegible]
[illegible] possessio [illegible] remanet [illegible]
[illegible] sint [illegible]
[illegible] a laico facta [illegible] ex [illegible]
[illegible] de acquir. et amittenda possess.

[illegible] iuris [illegible] in [illegible]
[illegible] non [illegible] pro ius, [illegible]
[illegible] ipso [illegible] et [illegible] ex [illegible]
[illegible] prout [illegible] possessio [illegible]
vel [illegible] in extremo [illegible]
[illegible] et tunc non nisi ex ea [illegible] in foro conscientiae [illegible]
[illegible] quia hoc [illegible]
[illegible] iuris remediis, interdum [illegible] contra
[illegible] moderamine tamen inculpatae tutelae,
[illegible]
[illegible]
[illegible]
[illegible] nemo [illegible]
[illegible]
[illegible] et [illegible] a laico [illegible]

[illegible] possessionis ea [illegible]
[illegible]
[illegible] et [illegible] vel [illegible]
[illegible] possessio [illegible] ab [illegible]
[illegible] publica auctoritate [illegible]

[illegible]

[illegible] scilicet ea [illegible] aut [illegible]

[illegible] amicitiæ [illegible] vel [illegible] est [illegible] qui [illegible] est [illegible]

[illegible]

[illegible]

[illegible] signis externis [illegible] [illegible] traditionis [illegible]

[illegible] sibi [illegible]

[illegible] alterius cuiusvis, in quibus dominium sine apprehensione [illegible]

[illegible] nobilem [illegible]

[illegible]

[illegible] ... [illegible] terat ... [illegible] ... [illegible] et [illegible] il satis [illegible] ... [illegible] ... [illegible] habet [illegible] ... [illegible] ... [illegible] non [illegible] ... [illegible] ... [illegible] in [illegible] ... [illegible]

[illegible] del [illegible] quello sia proceduto [illegible]
[illegible]
[illegible]
[illegible]
[illegible]

Rationes [illegible] quia ad [illegible]
[illegible]
[illegible]
[illegible]
[illegible] patet [illegible] illa regula
[illegible] ex [illegible]
[illegible]

[illegible]
[illegible]
[illegible] naturali [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible] sed nomine [illegible]
[illegible]
[illegible] non [illegible]
[illegible]
[illegible]
ut eos [illegible] 40 [illegible]
[illegible]
[illegible]

[illegible] ac [illegible] viderent.

[illegible]

De altera conditione legitimae [illegible]

[illegible] nationis sive de titulo.

[illegible]

[illegible]

[illegible] in allegato capite [illegible]

[illegible]

[illegible] bona fide accipienti [illegible]

[illegible] concedere voluit [illegible]

[illegible]

[illegible] tamen [illegible] accepit [illegible]

[illegible]

[illegible] memoria [illegible] temporis [illegible] tempore [illegible]

[illegible] in [illegible]

[illegible]

[illegible] relictae est tamen [illegible]

[illegible]

Verum [illegible], in qua auctor [illegible]

[illegible] statuto, [illegible] instrumento sive [illegible]

[illegible]

[illegible] posset, quia [illegible] meliu[s] [illegible] [illegible] annis [illegible], & [illegible] [illegible] dicitur.
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] contra [illegible] praescriptionem, quod [illegible] [illegible] [illegible] tempore mala fide [illegible] [illegible] praescribit, ut habetur authent. mala fide C. de praescriptionibus longi temporis. Ubi si res furtiva sit, aut [illegible] ea que pariter [illegible], aut [illegible] annorum [illegible] praescriptio [illegible] [illegible] [illegible]. [illegible] praescriptionem [illegible] annorum 30 [illegible], de praescriptionibus 30 vel 40 annorum.

De Bona Fide quae est praecipua Praescriptionis conditio.

Bona fides [illegible] in praesenti [illegible] [illegible] [illegible] qua [illegible] existimat rem esse suam [illegible] [illegible] [illegible] non [illegible] bona fide [illegible] [illegible] [illegible] ex [illegible] [illegible] aut [illegible] ex [illegible] [illegible] procedit.

[illegible] bona fides est [illegible] [illegible] [illegible] [illegible] [illegible] praescriptionis tempore. Id manifestum fit [illegible] [illegible] in [illegible] [illegible] mala fidei [illegible] tempore [illegible]. [illegible] ex Concilio Lateranensi IV sub Innocentio III [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] fide [illegible] synodali [illegible] definimus, ut nulla [illegible] bona [illegible] praescriptio tam canonica quam civilis [illegible] [illegible] constitutione atque consuetudini derogandum, quae absque mortali peccato non [illegible] [illegible] unde [illegible] [illegible] praescribit, in nullo temporis parte [illegible] conscientiam [illegible].

Sic [illegible] praescripti mala fide [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] ac [illegible] et [illegible] vero-
[illegible].

Quaeritur an [illegible] ut conversione bona fidei inve-
rit [illegible] conversione [illegible] [illegible] [illegible] [illegible]
[illegible].

[illegible] [illegible] [illegible] [illegible] [illegible]. Ratio est [illegible] quod
circa rem [illegible], mihi [illegible] incipit [illegible] [illegible] determina-
ta [illegible] [illegible] rationem, aut certe
de mea. Quod [illegible], nec [illegible] an aliena, nulla [illegible] ratio [illegible]
[illegible] [illegible] [illegible] [illegible] mea mihi vindicans
[illegible] [illegible] [illegible] [illegible] melior conditione alterius.
[illegible] [illegible] [illegible] [illegible] prudenter [illegible] [illegible], [illegible]
[illegible] [illegible] tempore procedit.

[illegible] [illegible] [illegible] [illegible] [illegible]
venerit, bona [illegible] fide invenit. [illegible]

[illegible] conversionem, quae bona fide capta [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] mo-
[illegible] [illegible] omnis sententia,
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] scientia aliena et
[illegible] [illegible] [illegible] procedit
[illegible].

Sed

Si vero [illegible] ... [illegible] ... etiam dubitans in re sua sit, simul etiam dubitet, an sibi liceat eandem retinere, [illegible] non continuat bona fide [illegible] ... [illegible] ... etiam erit [illegible] vel quia non bona fide [illegible] possidere, vel [illegible] non procedat usucapio.

Cur autem dubium magis possessionis [illegible] ... [illegible] ratio haec est, quia in dubio favendum est reo potius, quam actori, et actore non probante, reus absolvitur. [illegible] alicujus possessionem adire, salvo [illegible] qui vero antea possidebat, est veluti reus. Neutri igitur [illegible] possessionem [illegible], ad alterum non spectare, [illegible] sed dubitet, alter qui [illegible] persona [illegible], recte [illegible] in sua possessione relinqui [illegible] bona fide possidere coepit, non debet e possessione dejici, nisi [illegible] ... propter dubii [illegible] ... [illegible] possessione [illegible] absolvendus.

Verum non pauci sunt qui putant, eum, qui dubitet habet non [illegible] ... et probabile in re sua [illegible] ... [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible], quae fuerunt an[illegible]

[illegible]

[illegible]

[illegible] communicatione [illegible]

III [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] in [illegible]

[illegible]

[illegible]

[illegible] convenit [illegible]

[illegible]

[illegible]

[illegible]

[illegible] obligant, [illegible]

[illegible]

[illegible]

[illegible] iudicia [illegible]

[illegible] aut facti, [illegible]

[illegible]

[illegible] sed [illegible]

[illegible]

Resp.° [illegible] contrariam sententiam [illegible] [illegible] ratione [illegible] [illegible] et [illegible] [illegible] et [illegible] clari et manifesti impedit praescriptionem [illegible] quis ex [illegible] non admittat. [illegible] praescriptionem [illegible] in ignoratione etiam invincibili [illegible]. Utrumque responsum [illegible] ex l. 4 [illegible] constat.

[illegible]

[illegible] manifesto [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] tertio [illegible] [illegible] [illegible] ergo [illegible] [illegible] praescriptione longissimi temporis.

[illegible]

[illegible]

[illegible] mes esset [illegible] temporis gratia me nihil de- [illegible]

[illegible] ut memoria [illegible] exciderit [illegible] illud [illegible]

[illegible]

[illegible] illud [illegible]

[illegible]

[illegible]

[illegible]
mente facto sententiam is decision [illegible]
[illegible]

[illegible] Leges regnandi [illegible] qui non [illegible] [illegible] debere, non tribuunt cuique suum. hae d[e] pro[illegible] leges dictae eo pertinent, ut credi[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] et [illegible] [illegible] non incurrunt semel, [illegible] iterum [illegible] solvendi [illegible] et [illegible] [illegible] [illegible] [illegible]. [illegible] non liberati in conscientia si mala fide retineat [illegible] sicut non liberati is qui [illegible] pacto [illegible] aliquid, licet contra eum non detur actio in judicio.

[illegible] Bossuet, ut fatentur omnes, praescribere [illegible] [illegible] [illegible] [illegible] jus illud [illegible] in hac [illegible] mala [illegible] [illegible].

[illegible] regandi [illegible] in casu praecito, [illegible] [illegible] [illegible] [illegible], sed tantum permitto, [illegible] [illegible] [illegible] [illegible], ut p[illegible] at. [illegible] alte[illegible] ago [illegible] non [illegible] ergo [illegible] [illegible] [illegible] hac [illegible] [illegible] [illegible] [illegible] [illegible], ut [illegible] hac [illegible] de servitutibus urbanorum praediorum.

De conditione 4ta, seu de tempore quod leges ad praescribendum exigunt

Notandum pmo, [illegible] praescribi [illegible] [illegible] mobilia [illegible]. Res mobiles [illegible] quae loco moveri [illegible] [illegible] animalia [illegible] [illegible] [illegible] [illegible].

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[illegible] obtinenda [illegible] dicunt [illegible] venire sua-
[illegible] ager [illegible] ille [illegible]
[illegible] modi, ut servitutes [illegible]
te beneficia census [illegible] etc.

Notandum pro [illegible] dimandi [illegible] minus tempo-
ris ad eandem [illegible]
et quando [illegible] quando jus incoata ali-
[illegible] ita tamen, ut sublata caussa propter quam [illegible]
fat [illegible] tempore [illegible] non [illegible] que-
[illegible] tempore [illegible] aut [illegible]
[illegible] non [illegible] regiones [illegible] presump-
[illegible] dormit [illegible] illa [illegible] Rectore caret [illegible]
[illegible] non [illegible] judicare [illegible]
[illegible] certe [illegible]

[illegible] quando [illegible]
sat [illegible]
[illegible]
[illegible] haec
[illegible] aut [illegible]
[illegible] interruptio [illegible] judicial, pu-
[illegible]
[illegible]
[illegible]

[illegible] ultro [illegible]
[illegible] evidenter [illegible] qui aut p-
se [illegible] Albertus [illegible]
si [illegible]

quas

[illegible] constituit [illegible] [illegible]. Ex [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] ex [illegible] [illegible] p 30 annorum [illegible]

vat. Ratio e quia ad complendum [illegible]

[illegible] duplicem rationem [illegible] habent ut habet [illegible]

[illegible] longi temporis.

[illegible] ulti longi temporis in communi materia [illegible]

[illegible] 20 annorum vel intra tempus [illegible] intervallum 30

[illegible]. Prescriptio longi temporis [illegible]

[illegible] sine titulo [illegible] [illegible] tamen [illegible]

[illegible] [illegible] tamen [illegible]

[illegible] praescripsisse. Omis namque praescriptio requirit titulum vel coloratum qui [illegible]

[illegible], vel [illegible].

Nunc [illegible], quantum temporis jura [illegible]

[illegible] praescribenda.

[illegible] jure communi res mobiles [illegible] p. triennium praescribi

[illegible], ut habet [illegible]

[illegible]

[illegible] vel possidere [illegible]

[illegible] emat a [illegible] aut [illegible]

[illegible] cui administratio interdicta fuit: nam ex [illegible] ad usucap[illegible] mobili[illegible]

[illegible] bona [illegible]

[illegible] res mobiles bonorum Religiosorum [illegible]

[illegible] Romanae [illegible]

[illegible]

praescriptione [illegible] titulum requirentur [illegible]

[illegible]

[illegible] et [illegible] [illegible]

[illegible]

[illegible]

Resp. [illegible] [illegible]

[illegible], ut [illegible]

[illegible] tribus autem annis triginta Doctores comuniter [illegible]

[illegible] de praescriptionis et [illegible]

[illegible] vel Hospitalis vel monasterii,

[illegible] ex authentica citata, [illegible] actiones.

[illegible] de praescriptione.

[illegible] [illegible]

[illegible]

[illegible] 20 [illegible]

[illegible] iuxta jus

[illegible]

[illegible] hujus [illegible]

[illegible], omes [illegible]

[illegible]

illa mobilis, sive immobilis sit, continuata possessione [illegible] annos triginta [illegible]

[illegible] nemo in dominio [illegible] et utili turbare hujusmodi [illegible].

[illegible] nihil [illegible]

[illegible]

[illegible], ut de [illegible]

[illegible], [illegible]

[illegible]

[illegible] nec [illegible] apparuit, [illegible]

[illegible] , [illegible] soluta habit. Exactio alicuius census perpetui, aut [illegible] , que p. integros annos 100 [illegible]

[illegible] [illegible] [illegible] continuatur [illegible]

[illegible] prescriptione et cose quandunq. expresse, [illegible]

[illegible] [illegible] tempore [illegible] [illegible]

[illegible] incorporales [illegible] et alia [illegible] prescriptione

[illegible] corporalis subeunt; [illegible] tamen [illegible]

[illegible] actione prescriptio non procedit, nisi sciat, et toleret is contra

[illegible] prescribitur, que scientia et tolerantia non è ad [illegible]

[illegible] necessaria.

Prescriptio, que incepta contra auctores [illegible] etiam contra [illegible]

[illegible] heredes, procedit, sive illa incepta [illegible] sive [illegible] redun-

det. Interrumpitur [illegible] p. citatione et [illegible] et [illegible], a-

[illegible] [illegible] mandatum, actio [illegible] [illegible]

[illegible] prescribunt.

Et capitu. 106 = Ordiniamo che [illegible] nel

corso [illegible] , come [illegible] [illegible] , che [illegible]

[illegible] di quella ordinanza [illegible] corra al-

cuna prescrizione p. tutto il tempo, che [illegible] in matrimonio, non

solo contro [illegible] del marito, ma [illegible] contro [illegible] , se

fussero obbligati a dar la dote se [illegible] il marito o suoi heredi saranno

[illegible] pagamento di dote, volemo, che [illegible] s'inten-

da corsa la prescrizione [illegible] contratto [illegible] soliso

[illegible] e disposto p. la [illegible] delle prescrizioni. Ma se il marito [illegible]

metterà, che trascorino anni trenta senza [illegible] la dote in tal

caso si presuma [illegible] , salva sempre la [illegible] di tempo

quanto circa le prescrizioni [illegible] detti [illegible] =

[illegible] Verete [illegible]

[illegible] non [illegible] incertitudine [illegible] pre-[illegible]

[illegible] praescriptionis tempore [illegible] tenetur in foro conscientiae [illegible], si [illegible] termine praescriptionis [illegible]

[illegible] restitutio in integrum [illegible] perdidit [illegible]

[illegible] praescriptionis annorum quadraginta sit: ecclesia [illegible] de restitutione in [illegible] ecclesiis expresse concedit. [illegible] praescriptione [illegible] restituendi: Sed haec ad [illegible]

[illegible] S. Raymundus, [illegible]

pr-

prescriptione in contractu [illegible] in interno dominii [illegible]-
[illegible] necessario interveniat comparente [illegible] restitu-
[illegible] vel legitima prescriptione. Adrianus 6, [illegible]
[illegible] interni dominii prescriben-
tis [illegible] in illo [illegible] prescriptione [illegible]
[illegible] in [illegible] non [illegible] tenetur.
[illegible] quilibet aliquid pro re prescrip-
ta [illegible] solverit pro domo [illegible] venditoris non erat, non [illegible]
[illegible] cum contra ad restituendum obligant, [illegible] habuit titulo
gratuito; Nos cum communi sententia [illegible].

Conclusio

Prescriptio [illegible] in [illegible]
[illegible] dominium [illegible].
[illegible]
[illegible]

[illegible] ob [illegible] Republica transferre potest
[illegible] spectat, in eum transferre [illegible]
[illegible]
[illegible], ut ex dictis [illegible]
[illegible] potest. Ad Rempublica [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]

Cum

Domini [illegible] tenientem [illegible] vendere [illegible]: at possessores legi-
timi [illegible] non [illegible] [illegible]
[illegible] [illegible] [illegible] ad extinc-
[illegible]
[illegible] [illegible]
[illegible] [illegible]
[illegible] [illegible] videlicet man-
[illegible] [illegible] evertit, ut [illegible]
[illegible] [illegible] concessa dicitur, et di-
[illegible] [illegible] Pontificia [illegible] [illegible] anime
[illegible] [illegible] [illegible] peracta [illegible]-
[illegible] patet ex causa 18 quest. 13. de prescriptionibus, et libri [illegible].
[illegible] [illegible] Alexander III [illegible]
[illegible] [illegible] [illegible]
debat, [illegible] [illegible] de iure [illegible]
et humana melior [illegible] [illegible]
[illegible] prorsus actiones excludit.

[illegible] [illegible] [illegible]
et [illegible] [illegible] dominia maria
[illegible]
[illegible] [illegible] vero non minus
tranquillitati et [illegible] conferri [illegible] quas ipsa [illegible]
[illegible]

[illegible]
[illegible]
[illegible] [illegible]

causa

causa non e nimis praeterea. item rarissima causa subest cur priori [illegible]

[illegible]

[illegible]

[illegible] non debet [illegible]

[illegible]

[illegible] in alterius detrimento et injuria [illegible]

[illegible] in alterius detrimento [illegible]

[illegible] in alterius detrimento

[illegible]

[illegible] praescriptionis [illegible]

[illegible] de rerum divisione [illegible]

[illegible] praescriptionis [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] vero [illegible] non [illegible] possessione [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] non recesserit [illegible]

[illegible]

[illegible]

[illegible] ... [illegible]

... cujus autoritas [illegible] ... [illegible] ... in stat[u] ... [illegible]

Resp.° [illegible] ... Doctore[s] [illegible]

[illegible] ... qui post S. Thomas ... scripse[runt] [illegible]

[illegible] ... quia lex [illegible] ... [illegible]

[illegible]

[illegible] ... unas ... causas, ob quas [illegible] ... ex communi [illegible] ... [illegible]

[illegible]

[illegible] provisione [illegible]

[illegible]

descenderit regigentia prioris domini.

[illegible] lex ista instituta est initio [illegible] propter [illegible] hac lex [illegible] punicione regigentia invectae.

[illegible]

[illegible] debet. Tamen non minus nec non exactas praescriptiones [illegible]

[illegible] bona fides [illegible] intervallo [illegible] iudicis [illegible] legis auctoritas. [illegible]

[illegible] lex in sententias suas non intendit nec [illegible] rei dominium ab uno in alium [illegible]

[illegible]

[illegible] dominia [illegible]

[illegible]

[illegible] fides [illegible] praescriptionis [illegible]

[illegible]

[illegible]

[illegible] praescriptionis [illegible] juste [illegible]

[illegible]

[illegible]

[illegible] externo [illegible]

[illegible]

[illegible]

[illegible] fide possessor praescribit, quia haec [illegible]

[illegible] in conscien[tia] [illegible] possessor injustus.

[illegible]

[illegible]

[illegible] non [illegible] dent.

[illegible] libe [illegible]

[illegible] et [illegible]

[illegible] separata [illegible]

[illegible]

[illegible] in concilio [illegible] anno 1557. [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] lege prescriptionis, que triginta annis [illegible] attendenda non esse [illegible]

[illegible]

[illegible]: Demum anno 1563 [illegible], [illegible]

[illegible] praescriptionis [illegible]

[illegible]

[illegible]

[illegible] [illegible]

[illegible] solvant presumptione [illegible] tempore debitas. idest [illegible]

[illegible]

[illegible] longissimis [illegible]

S[illegible] IV

[illegible] monumenta [illegible]

[illegible]

[illegible]

[illegible]

[illegible] (quod frequenter accidit) si quis [illegible] monstraverit, continuis [illegible] eorum, qui [illegible] fluminis [illegible]

[illegible]

[illegible] tantum, qui [illegible]

[illegible]

[illegible]

ex aliena materia species aliqua, seu opus confectum est aliquo, [illegible] si quis ex alienis uvis vinum fecerit aut ex alieno auro, argento, vel [illegible] vasa [illegible]

[illegible]

[illegible] si ea species ad priorem et rudem materiam reduci possit, is [illegible] si non possit reduci, [illegible] intelligitur dominus, qui fecerit =

[illegible] ita tamen, ut, qui opus confecit, [illegible] [illegible] pro nomine materiae pretium solvat. [illegible] materia contulit [illegible] debeat [illegible] illo [illegible]

[illegible]

[illegible] rei alienae [illegible] Sermet. [illegible] Dominus rei cedit, neque [illegible] percipierit. Si tua [illegible]

[illegible]

[illegible] civilis, [illegible] tamen [illegible] actione [illegible]

[illegible]

[illegible] universal. [illegible] vocat, ut [illegible]

[illegible] materie [illegible] aliena [illegible]

[illegible]

[illegible] in suo si quis aliena materia usus sit [illegible]

[illegible] domino [illegible] etc.

Qui in alieno solo ex sua materia edificat vel [illegible] se in alieno fundo edificare [illegible] in hoc casu [illegible]

[illegible] remedium [illegible] zon [illegible]

[illegible] tenere aut pascere consuevit: vel in aliquo solo [illegible]

[illegible] cc. [illegible] ut [illegible]

[illegible] materia produs, et

[illegible]

[illegible]

[illegible] arbor [illegible] ipse qui [illegible]

[illegible] operare [illegible] potuit, ut [illegible]

[illegible] non noluisset ipse, qui damnum ex arbore [illegible]

[illegible]

Cap. 11

De reliquis speciebus juris.

Proximo inter reliquas juris realis [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] incarnat.

Articulus [illegible]

De servitute.

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] est, ut in [illegible] salva tamen [illegible] ejus substantia, aliquid [illegible] [illegible] in suum commodum.

[illegible] [illegible] [illegible] [illegible] [illegible]. Personalis dicitur vel quae [illegible] [illegible] [illegible] quae personae [illegible] [illegible] maximus [illegible] [illegible] ex [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] praedio quae aliis vicinis praediis debet, et [illegible] [illegible] [illegible] [illegible] praedio [illegible] [illegible] habent [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] illi quibus vicina praedia jus transeundi [illegible], sui juris [illegible], [illegible] [illegible] [illegible] propria auctoritate [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] servitutes [illegible], et [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible].

Servitus realis [illegible] [illegible] in [illegible] [illegible] et rusticas [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] urbani nomine intelligitur [illegible] [illegible] [illegible] habitando [illegible] [illegible] [illegible] sive [illegible] [illegible] et [illegible] [illegible] [illegible] [illegible] [illegible]. Servitutes [illegible]

[illegible] in [illegible] [illegible]

[illegible] rusticus [illegible] [illegible], aut [illegible]
stabulis, [illegible] domibus [illegible] prædiorum rusticorum [illegible]
[illegible] Dominus [illegible]
[illegible] vel [illegible] utenui concedere [illegible] sed jumentum aut vehiculum [illegible]
[illegible] habet [illegible]
[illegible] Via utrumque jus itineris et actus [illegible]
[illegible] sive [illegible]
[illegible] aliis [illegible]
[illegible] [illegible]
[illegible]
[illegible]

[illegible]
seu non [illegible]
[illegible]
[illegible]
[illegible] non [illegible] vel amicitia [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]

[illegible] non [illegible] [illegible] hac [illegible]
[illegible] sed discrimen [illegible] [illegible] [illegible]
[illegible]
[illegible]

vacare re sua libertate, [illegible] hanc autem non amit [illegible] [illegible] [illegible] re, [illegible] servitute [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] obtinere [illegible] [illegible] [illegible] exemplo [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] habens [illegible]

Extinguitur servitus non [illegible] [illegible] etiam contrariis pactis; item vel destructione [illegible] [illegible] [illegible] [illegible] vel [illegible] rei, qua servit [illegible] [illegible] [illegible] ut aquas haurire per fundum meum [illegible] illac transire nequis: sed [illegible] [illegible] [illegible] [illegible] [illegible] esset [illegible] praescribendi l. 14. et l. 35. ff. de servitutibus praediorum rusticorum

Tit. 11

[illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ius [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] absque [illegible] iniuria [illegible] [illegible] [illegible] [illegible] existimant [illegible] [illegible] [illegible] [illegible] ipsa [illegible] [illegible] carere. [illegible] [illegible] quas ipso usu consum[illegible] [illegible] [illegible]

[illegible]

... gravenit ... hatricia ... diversa ... [illegible]

Usus juris de quo soto juris interpretes agant, dicitur pro ... [illegible]

[illegible] ... sed ... tamen ... [illegible]

... vero ... [illegible]

... dicitur stio nonnisi in ... [illegible]

majus rei non potest ... [illegible]

... nemas habita ... [illegible]

... inhabitare possit ... [illegible] ... habet ... [illegible]

proprietario diligenter debet.

Ususfructus definitur jus alienis rebus utendi et fruendi sal[illegible]

[illegible] ... definitio ... [illegible]

[illegible]

... testamento, ... privato ... [illegible]

[illegible]

[illegible]

[illegible] ad necessitatem [illegible]

[illegible]

[illegible] nomine [illegible]

[illegible]

[illegible]

[illegible]

[illegible] inveniunt [illegible]

[illegible]

[illegible]

[illegible] ad maturas [illegible] tales structuras eos [illegible] ad [illegible]

[illegible]

[illegible]

verbis intelligo, quo [illegible] proprie contineri non posse in rem, quae [illegible] [illegible] est in [illegible] [illegible] certa [illegible]

[illegible]

[illegible], sed tum [illegible] in [illegible]

[illegible] certa [illegible]

[illegible]

[illegible]

[illegible] sibi et ceteris conservare [illegible]

[illegible]

[illegible]

[illegible]

[illegible] sentiat et [illegible]

De constructione [illegible] vel [illegible] in [illegible]

[illegible]

[illegible]

tamen [illegible] non habet [illegible] non [illegible]

[illegible] anima [illegible] tunc [illegible]

[illegible] sua [illegible] in [illegible]

[illegible]

[illegible] aut [illegible] vertere. et [illegible]

[illegible]

7–
[illegible] ad structuram conveniret [illegible]

[illegible]

[illegible]

[illegible]

[illegible] habet humanus sua cohaerentia [illegible] illos [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] uxorem mancipare circa [illegible] caritur. 225

[illegible]

Decione che Sicurano li alimenti [illegible]

III

[illegible] iustie [illegible]

[illegible] iniuriis in [illegible] humanum [illegible] genere [illegible]

[illegible] restrictione.

[illegible]

[illegible]

[illegible]

In [illegible] in [illegible] seu [illegible] [illegible]

[illegible]

[illegible] [illegible] [illegible]

[illegible] Hac [illegible] [illegible]

Ex hoc [illegible] sermone [illegible]

[illegible] non invese una [illegible] hoc [illegible]
ut in se [illegible] : sed [illegible] [illegible] [illegible]
[illegible] quod in simplici operatio[illegible]

[illegible]

[illegible] ses. [illegible]

[illegible]

[illegible] contrarius. [illegible]
ne [illegible] jam ante [illegible] [illegible] [illegible]

[illegible] aut sancta [illegible]

[illegible] Vere honesta [illegible] honesta [illegible] debitum reddat.

Cap. I.

Definitio, et divisio justitiae.

[illegible] justitia [illegible]

[illegible] justitiae [illegible]

[illegible]

[illegible]

ito-

[illegible]

di aliena.

Corollario.

[illegible]

[illegible]

diens et [illegible] distin[illegible] [illegible]

[illegible] [illegible] Cetis, ac vebati [illegible]

[illegible]

[illegible]

[illegible] inter [illegible]

[illegible]

[illegible]. Nunc ad [illegible] ju[illegible].

[illegible] duplici aspectu considerari po-

[illegible]

[illegible] justitia [illegible]

[illegible]

justitia [illegible]

[illegible] quae comu-

[illegible] a vie, et obto

[illegible] ab [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

privat[illegible]

justitia [illegible] tribuit in commutativa, et distributiva.

Inter

[illegible] se [illegible] jus inve[illegible] [illegible], vel pacti, aut contractus, [illegible] quia inter actiones quas dirigit [illegible] missionis ab eo cui facta fuit acceptata.

Iustitia distributiva [illegible] corrumpa [illegible] et muneris [illegible] cujus merita et [illegible] communia [illegible] bene honoris et in ratione [illegible] nemo [illegible] considerat [illegible] a merentibus nemo [illegible]

[illegible] inter [illegible] iustitia [illegible] ordine [illegible] proportio geometrica [illegible] inter [illegible] bus extrema [illegible] convenian [illegible] in [illegible] inter bona distribuenda [illegible] e inter [illegible] quare [illegible]

[illegible] numerus [illegible] in [illegible] numerus [illegible] unorum millia [illegible] numerum [illegible] in numerum [illegible].

[illegible] particulares [illegible] minister [illegible] in [illegible] modum agit [illegible] decernat [illegible]

[illegible]

[illegible] cæteris distincta

[illegible]

[illegible] iustitiæ legalis [illegible] communis [illegible] parte [illegible]

[illegible]

[illegible]

[illegible] Hinc [illegible] aliud [illegible] bonum, [illegible] bonum civem.

[illegible]

[illegible] iustitiæ legalis [illegible] ad bonum commune. [illegible] sicut cha-

ritas

vitā, quę reperitur ī[n] Divinis [illegible] omnia [illegible] [illegible] ita etiam iustitia legalis [illegible] secundū [illegible] a seruo [illegible] quod respicit commune [illegible]

Quęres 2.° [illegible] iustitia legalis [illegible] communitate [illegible] esse propria iustitia?

[illegible] ratione [illegible] secundū [illegible] respectu [illegible] communitatē [illegible] ratione [illegible] [illegible] habere [illegible] communitas [illegible] contrahere [illegible] tanquam membra distincta, accipiunt [illegible]

Quare sint duę particulares virtutes, [illegible] ex propria iustitia, [illegible] ex aliqua contractione [illegible] dicitur inter [illegible] communicia et [illegible]

Sic etiā Princeps [illegible] aut Gubernator [illegible] [illegible] administret [illegible] non modo ex iustitia legali, [illegible] etiā ex iustitia [illegible] officium [illegible] Gubernatores [illegible] [illegible] Gubernatione [illegible] [illegible]

[illegible] vero rationē iustitię etiā legali iustitię convenire [illegible] tionē ad veram et propriam iustitiam pertinenti. Primo ē verum [illegible] legalis [illegible] communitas [illegible] habent ad ordinanda quę communi bono necessaria vel utilia [illegible] ex natura rei. neq, enim consistere communitas potest [illegible] [illegible] obligatio [illegible]

de ea que [illegible] et [illegible]

communitatis [illegible] bito [illegible] privatis [illegible]

et [illegible] bono comuni debetur [illegible] jure comunitatis [illegible]

[illegible] qualitas autem [illegible] ut [illegible]

quantum [illegible] communitati [illegible] debet [illegible]

[illegible] comunia [illegible] justitie [illegible] tenet [illegible]

[illegible] justitie inest.

[illegible] aliud [illegible] et aliud jus [illegible] quando [illegible]

diversa [illegible] illa [illegible]

Quaeres [illegible] et [illegible] accepta non [illegible]

[illegible] qui ita divisi [illegible] ut unus non sit pars alterius. [illegible]

[illegible] ejus [illegible] ipse [illegible] pars [illegible] quatenus [illegible]

[illegible] sunt [illegible] et

[illegible]

Resp. distinctione [illegible] justitia [illegible] inter [illegible]

[illegible] quando [illegible]

jura comunitatis [illegible] illa [illegible] que

inter [illegible] equalitatis ponit. Non e autem [illegible] ajunt quando

[illegible] non sunt diversa [illegible] licet pars [illegible]

sit [illegible] habet in [illegible] bona [illegible] justitia [illegible]

carere [illegible] valet.

Quaeres [illegible] restitutiones [illegible]

[illegible] non [illegible] legalis. [illegible]

Resp. [illegible] tantum effectus [illegible]

[illegible] neq. inter [illegible] comun[illegible]

[illegible] non [illegible] restitutionis [illegible]

tantum [illegible]

quos

quod justitia legalis [illegible] privati, qui aliquod bonum Reipu-
[illegible] impedit [illegible]
[illegible]

[illegible]
[illegible] re specie a justitia distributiva

[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible] fundamentum [illegible]
[illegible]
[illegible]
[illegible]
[illegible] juxta dignitatem [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]

[illegible]
[illegible]
[illegible]

Respondeo [illegible] justitia distributiva
[illegible]

debiti

[illegible] commune [illegible]

novo [illegible]

[illegible]

[illegible]

[illegible] non [illegible] comuta [illegible]

[illegible]

[illegible]

[illegible]

Resp.° negando [illegible] compensatio [illegible]

[illegible]

[illegible]

[illegible] compensatio [illegible]

[illegible]

[illegible] conditione [illegible]

[illegible]

[illegible] compensatione [illegible] quia [illegible]

[illegible]

[illegible]

[illegible] comutati [illegible] non [illegible]

[illegible] quia [illegible]

[illegible] quaest. citata art. 12 ad [illegible]

[illegible]

[illegible] justitia [illegible]

[illegible]

[illegible]

[illegible]

[illegible] ex justitia [illegible]

[illegible] con[illegible] [illegible]

[illegible] distributione [illegible] habeat

[illegible] contra [illegible] habent [illegible]

[illegible] contractu [illegible] alienæ [illegible]

[illegible] distributiva [illegible]

[illegible] commutativa [illegible] justitiæ [illegible]

[illegible]

[illegible] dignitatis [illegible]

[illegible] justitia [illegible]

[illegible] et [illegible]

[illegible] commutativæ, restitutioni [illegible]

[illegible]

[illegible]

[illegible] tantum [illegible]

[illegible]: et ideo jam pertinet ad justitiam commutativam =

[illegible]

[illegible] commutativa justitia [illegible]

[illegible]

[illegible]

[illegible]

6 [illegible]

[illegible] movere singulis iis, ad quod exu[illegible]

[illegible]

[illegible]

[illegible] tributa colligat ex [illegible]

[illegible]

[illegible] beneficia [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] his, [illegible] restitutione [illegible]

[illegible] vel officia publica [illegible] violant

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] promittat [illegible]

[illegible]

[illegible] ratione [illegible]

[illegible]

[illegible]

[illegible]

discveret, ut a vigore et prosecutione [illegible] justitie [illegible]

51

[illegible] ra [illegible] Div
[illegible] S. Thom [illegible] Nal. D. [illegible]
[illegible] in premio [illegible] iustitia distributiva [illegible]
[illegible] iustitia non [illegible] sed [illegible]
[illegible] veritas [illegible] prudentia [illegible]
deesset [illegible] primo [illegible] deesset [illegible]
[illegible] non ex [illegible]
[illegible] ex [illegible] omnia [illegible]
[illegible] dignitate [illegible] non illi deesset [illegible]
[illegible] ut [illegible]
et dignitate [illegible] distributionis [illegible] non illi [illegible] sufficiens [illegible]
[illegible]
[illegible] et [illegible]

Verum [illegible] in distributione [illegible]
[illegible] iustitiae [illegible]
[illegible] iustitia [illegible]
[illegible]
[illegible] iustitia non [illegible]
[illegible]
[illegible] in singulos distribuit [illegible]
[illegible]
[illegible]
[illegible] rigorosa [illegible]
[illegible]
[illegible] Nal. [illegible]
[illegible] modo [illegible]
[illegible] explicato [illegible]

[illegible] [illegible]

personalle tribuit, et ejus violatio [illegible] restitutioni afficit. justitia vero distributiva [illegible]

[illegible]

Quæres etiam, an justitia [illegible] distinguat [illegible]

[illegible]

[illegible] vindicta [illegible]

[illegible] ratione legum [illegible] bonum commune [illegible] in puniendo negligentia major [illegible]

[illegible]

[illegible] communiter [illegible]

[illegible] bono communi, [illegible]

[illegible] poenas infligere [illegible]

et jus personæ læsæ.

Hinc [illegible] vindicta [illegible]

obligationes restitutionis, [illegible] personæ læsæ [illegible] vindicta [illegible]

certe non [illegible] teneatur [illegible]

[illegible] mercenari [illegible]

[illegible]

[illegible]

[illegible] pertinet præmia pro meritis [illegible] ergo ad eandem pariter spe[illegible]

[illegible]

Resp. [illegible] justitia distributiva [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

comu[illegible]

[illegible]

[illegible] contra [illegible]

[illegible] habeant ad sustinendam dignitatem [illegible]

Quaeres [illegible], an tradita justitiae divisio sit legitima, et ad [illegible]

Resp. Aff. [illegible] ordine compositi [illegible] ordini, in quo nos in societate [illegible]

[illegible] habent ad [illegible]

[illegible]

[illegible] ad [illegible] nempe [illegible] ad [illegible]

[illegible]

[illegible]

[illegible] humanae [illegible]

II.

[illegible]

[illegible]

[illegible] injustitia [illegible] sicut [illegible] justitia [illegible]

[illegible] injustitia [illegible]

[illegible]

aut legi, aut superioris praecep[illegible]

[illegible] virtute peculiari [illegible]. Ita in praesenti [illegible] injustitias [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] cuique tribuit, ita per actus injustitiae jus [illegible]

Sicut justitia, ita injustitia dividitur. Injustitia [illegible]

[illegible]

[illegible] ne proximus dicti sive in vita sive in [illegible]

[illegible]

[illegible] una magni momenti [illegible] et una [illegible] habet [illegible]

[illegible] commune [illegible]

[illegible] illius, qui [illegible] injuria dici solet in materialis,

[illegible] violet [illegible]

[illegible] jus [illegible] a volente et [illegible]

[illegible] volenti fieri [illegible] injuria.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] patrocinanti. [illegible] nam [illegible]

[illegible] illud [illegible] quod aliter [illegible]

[illegible] qui p. ignorantiam contraxit. ut si quis

[illegible]

[illegible] non [illegible]

[illegible] injuria [illegible] videtur, [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] arbitrio reliquit [illegible] violet jus tamen [illegible] non

[illegible]

[illegible]

[illegible] injuria [illegible] non fieri [illegible] qui juri suo cedit, tamen injuria fit alteri, qui suo [illegible] inter se habeant [illegible] injuriam [illegible] tamen [illegible] ipsi [illegible] concessa [illegible] injuria [illegible] aucuerint [illegible]

Quod [illegible] contractus [illegible] in casu [illegible] cedere [illegible] quia [illegible] non [illegible] contra jus, sed secundum jus ipsi concessum, et sic nulla e violatio juris et nulla proinde injuria

Contendunt autem [illegible] injuriam [illegible] consentienti [illegible] cedere possit [illegible]

[illegible]

[illegible]

et non se [illegible] secundum voluntatem [illegible] [illegible]. [illegible] ergo [illegible]
[illegible] materialiter [illegible]
[illegible] facere [illegible] invitus [illegible] in-
justa [illegible]. tamen [illegible] non [illegible]
[illegible]
[illegible]
[illegible]
[illegible]

[illegible] [illegible]
[illegible]
[illegible]
[illegible]
[illegible]

[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]

[illegible]
[illegible] III [illegible]
[illegible]
[illegible]
[illegible] XI [illegible]
[illegible]

ergo

[illegible] contra eum [illegible] licet [illegible] adulterium [illegible] injuria [illegible] injuriam [illegible] cessio, quod quisquis remittit, remittere nequit.

Ad primum respondeo [illegible] excommunicatione lata ob violentas manus in clericos [illegible] non [illegible] clerico veram injuriam [illegible], sed [illegible] canon [illegible] clerici ordinati, quasi in favorem ordinis [illegible] III. [illegible] injuria [illegible] statui clericali, non personae.

[illegible] contra ipsum [illegible] ejus consensu et cessione [illegible] tamen [illegible] habere [illegible] contra sacramentum [illegible] publici, cui juri maritus cedere non potest [illegible] ut injuria [illegible] contra eum [illegible]

[illegible] circa [illegible]

[illegible]

[illegible] cessit [illegible]

[illegible] tamen [illegible] habet, non [illegible], quia [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible] acer

Cap. III

De restitutione in genere

[illegible] si res sublata restituat, et in perceni [illegible] [illegible] perask. Quod si bona ejus [illegible] [illegible] non possit, [illegible] [illegible] [illegible] concernatione remanet debet, ut fit [illegible] [illegible] [illegible]. Quare [illegible] [illegible] [illegible]

[illegible] thesaurum [illegible] quae materia [illegible] [illegible] integret ea sane est quod nunc [illegible] restitutione.

Art. I.

De restitutionis nomine et natura.

[illegible] [illegible] [illegible] vocat [illegible] [illegible] [illegible] speciale justitiae restitutio appellat.

[illegible] justitiae [illegible] [illegible] de habente suo bona [illegible], vel illata damna compensant [illegible] justitiae, quia nani- [illegible] violata justitia [illegible] ad restitutionem. [illegible] commutativae, [illegible] [illegible], aut [illegible] [illegible] [illegible] vel [illegible] rei [illegible] [illegible] [illegible] in possessione, vel dominio rei suae, quemadmodum erat [illegible] [illegible] [illegible] [illegible] justitiae [illegible] [illegible] interim [illegible] [illegible] que

[illegible] Ita docet S. Thomas quest. 62. art. 2. [illegible] secundum recompensationem [illegible] quia per [illegible] commutativa. Et ideo [illegible]

[illegible] restitutio [illegible] Laudata art. [illegible] conservatio [illegible] mutacum [illegible] aliquo [illegible] dicitur restitutione [illegible] damnum compensat et aequivalens [illegible]

[illegible] complexi sumus, et ipsa de restitutione [illegible] ad satisfactionem [illegible] sive [illegible] restitutio vel potius [illegible]

Art. II.

De radicib. [illegible]

[illegible] tione ex re accepta ex contractu et quasi contractu

[illegible] aliquid [illegible] iniusta acceptione [illegible] restituend. [illegible]

[illegible] ergo in eo, cujus res ablata vel destructa est, semper manet [illegible]

[illegible]

[illegible] in se, aut in equivalenti non obstat [illegible]

[illegible] quantitatem. [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] debet [illegible] tamen

[illegible] restitu-

re. Hinc illa regula [illegible] in [illegible] Locupletari non debet aliquis cum alterius damno [illegible] jactura.

[illegible]

[illegible]

[illegible]

[illegible] accepit [illegible] tertius restitutionis titulus [illegible]

[illegible] justa [illegible]

[illegible] in re ipsa, vel in equivalenti assignandus est [illegible] principia [illegible]

[illegible] sive [illegible] mutuum [illegible] re [illegible]

[illegible] cui fieri [illegible] non extent

[illegible]

[illegible]

[illegible] injuste [illegible]

[illegible]

[illegible] nas [illegible]. et in eo, qui alteri damnum attulit, se [illegible]

[illegible]

[illegible] eorum damni est [illegible] [illegible]

[illegible] damni remissis. Unde [illegible]

[illegible]

[illegible] I

[illegible]

Ut quis ex iniusta acceptione seu retentionis teneat duo [illegible]

[illegible]

[illegible] ad [illegible] Quaestio [illegible]

[illegible]

[illegible] conscientia [illegible] aut [illegible]

[illegible]

[illegible] et [illegible] libero [illegible]

[illegible]

Conclusio I

[illegible]

[illegible] ex illo [illegible] restitutione [illegible] caret [illegible] non convenit [illegible]

[illegible]

[illegible] restitutionem [illegible] ex judicio restitutionis [illegible] rescindi.

[illegible] contra [illegible]

[illegible] exceptionis [illegible]

[illegible] non exceptio [illegible] non caret [illegible]

[illegible] sententiae [illegible]

[illegible] exigere quis potest, ut sui restitutio fiat. cui sibi rationabiliter inscitè illata injuria fuit [illegible] rationabiliter [illegible]

[illegible]. quis enim de actione [illegible] incolentata rationabiliter conveniri possit

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Neque primo hujusmodi leges jus [illegible] esse, sicut sunt aliae [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] contractui [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

petitio

[illegible] *adjungit: at si [illegible]* [illegible] *invenit* [illegible] *extorem hujusmodi damnum interdum* [illegible] *aut* [illegible] *restitutio locum non habet.*

[illegible] *destruit.*

[illegible] *voluntarie* [illegible] *involuntarie* [illegible]

[illegible] *co addit, ego obliga* [illegible]

Coroll. 1. [illegible]

[illegible]

[illegible]

[illegible] II [illegible] sententiae [illegible] in [illegible] incendi[illegible] [illegible] non [illegible] ex ca[illegible] culo [illegible] alio [illegible] non [illegible] multa [illegible] trabes [illegible] [illegible] tamen [illegible] hinc [illegible] incendi[illegible] [illegible] crimine [illegible] [illegible] nascitur [illegible] non constat [illegible] tenet [illegible] diligentia [illegible] prudentes [illegible] quod debuit, aut debebat.

[illegible] III [illegible] ex [illegible] imperitia [illegible] consilio [illegible] non vero [illegible] ex illo consilio tamen [illegible] [illegible] male [illegible] [illegible]

[illegible] IV [illegible] causa [illegible] tenet [illegible] poenam [illegible] [illegible] parte [illegible]

morte

[illegible]

[illegible] ... ergo ... [illegible]

[illegible] ... alia talis ... [illegible] ... materiae [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] ... ergo ... [illegible]

[illegible]

[illegible]

[illegible]

[illegible] ... consequenter

pars damni pro quantitate [illegible]. Hanc sententiam valde probabilem esse etiam

[illegible] ... existimant ... [illegible] ... alteri [illegible]

[illegible] ad internam [illegible] illius [illegible]

[illegible]

Conclusio II

[illegible] videtur non esse obligationem [illegible] damnum citra contractum

aut officium, quando quis ex culpa [illegible]

[illegible]

[illegible] totius [illegible] ordine [illegible]

[illegible] in [illegible]

[illegible]

[illegible] obligatio [illegible]

[illegible] in ordine suo [illegible] in ord[illegible] [illegible]

[illegible]

[illegible] ex quantitate [illegible], sed etiam ex quantitate [illegible]

[illegible] Ergo [illegible].

[illegible] restituenda [illegible]

[illegible] non [illegible] debuit. Ergo [illegible] inaequalitatem [illegible]

[illegible]

[illegible] ut reparatio sit proportionata injuriae.

[illegible] culpa [illegible]. Ergo [illegible]

-6- [illegible] nostri, [illegible] estimur, nempe ex levi causa non posse [illegible] com-

patione convergere.

[illegible] nomis [illegible]

[illegible]

[illegible] Cam [illegible]

[illegible] respondet [illegible]

[illegible] sub [illegible]

[illegible]

Rep° [illegible]

[illegible]

[illegible]

[illegible]

nis respondet. ergo etc.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] pro [illegible]

[illegible]

[illegible]

[illegible]

e, [illegible] damni [illegible]

[illegible]

[illegible]

[illegible] velut

[illegible]

[illegible] nostris, [illegible]

[illegible]

[illegible] de restitutione [illegible]

[illegible]

[illegible]

[illegible]

[illegible] licet damnum [illegible] ex culpa [illegible]

[illegible]

[illegible]

[illegible] contrahentes imponat

[illegible] III

[illegible] in contractu [illegible]

[illegible] utilitate solius [illegible], ut [illegible] in deposito [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] deposito [illegible]

[illegible] de deposito, dici etiam de commodato

[illegible] utilitatem [illegible] ut a Petro [illegible]

[illegible]

[illegible] sequentes [illegible]

[illegible]

[illegible] majori [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Gregorius IX [illegible] mora [illegible]

[illegible] ex utroque jure [illegible] et Canonico [illegible] lib. 6. [illegible] IX [illegible] accepit [illegible] regulae [illegible] vestimenti [illegible].

[illegible] capitulo citato de commodato [illegible]

[illegible]

[illegible]

[illegible] Caeterum si fuerit in mora, et statuto tempore [illegible] interierit, aut deterior evasit, id enim sine hac mora culpabili forte non [illegible]

[illegible] intersit inter [illegible]

[illegible] comiret [illegible] di [illegible]

quod potest a [illegible] vacuum, tempore [illegible] habet [illegible] comiret

[illegible] comodata [illegible] non [illegible] tempus [illegible]

[illegible] Quare cum comodat [illegible] materias [illegible]

[illegible] revocari non potest [illegible] minus merito sustineat. contra

[illegible] habeat [illegible] ut semper revocari ad arbitrium concedentis

[illegible] contracta non teneat [illegible]

[illegible] ulpa lata et habet [illegible] contractu [illegible]

Quaeres [illegible] quae apud comodatorium [illegible]

[illegible]

[illegible] quia comodatarius non [illegible]

[illegible]

[illegible]

[illegible]

[illegible] ad restituendum non [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Inquies. Qui [illegible] remittit [illegible]

[illegible]

[illegible]

[illegible]

[illegible] vel comodatal non habet comodatarius Ergo si pereat [illegible]

[illegible]

[illegible] culpa perit.

[illegible]

[illegible]

[illegible] dantis, quod non est auissent tanta dimenda [illegible] re scat quasi contra [illegible] columnae. [illegible] Hinc famuli, qui ex officio [illegible] resarcire damnum debent ex culpa levi.

Qui tamen conducti sunt ad transferendas columnas similesve res [illegible] res ex natura sua [illegible] exigunt, et ipsa quae in eis [illegible] levissima haec in his lata reputatur. [illegible] commodatum in articulo [illegible]

Ex [illegible]

[illegible]

[illegible]

Si vero res aliena e[illegible] teneris ad [illegible] [illegible]

[illegible]

[illegible] [illegible] istud [illegible]

[illegible]

[illegible] in [illegible] Aristotel[illegible] esse in [illegible] communi. Si vero [illegible]

[illegible]

ex [illegible] iuridica [illegible] dominati [illegible]

[illegible] sententia [illegible] communiores [illegible]. [illegible]

[illegible] æquitati rationem [illegible]

[illegible] sunt naturali æquitati consentanea

[illegible] initio. adjiciat enim aliud est [illegible]

[illegible]

[illegible] tale ut vitet usuræ [illegible], et negligentia

[illegible] tale ut contract. facile [illegible]: [illegible]

[illegible] emo comparare valet si [illegible] incons

[illegible] damnum [illegible] theologica seu [illegible]

[illegible] contractu vel [illegible] se obligat ad

[illegible] qua

[illegible] exinunt. ergo contrahens damnum ex causa [illegible]

[illegible] ocasio eum hoc onus [illegible] in contract. libere suscipiat. [illegible]

[illegible]

Conclusio IV.

[illegible] contractu [illegible] est officio absolute, et p. se non [illegible]

[illegible]

omnes, aut certe communis sententia

[illegible] Item in [illegible] se obligat ad officium majori [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] vere [illegible], et [illegible]

[illegible]

Dixi absolute [illegible]

[illegible] ad libere communiter solent [illegible] prudentes homo. [illegible]

[illegible]

aut

[illegible] ti, ut ea vera sua diligentia singulari praestent

[illegible]

intercedit quidam contractus utilis utrique. Ergo etc.

Resp. dici posse eum, qui sic officium [illegible] et [illegible] culpa levi: quia debet [illegible]

[illegible] communiter debent homines ejusdem officii [illegible]

[illegible]

[illegible] ustoria, ex qua damnum consecutum est: unde merito censetur causa damni secu[illegible]

[illegible]

[illegible] ri ejusdem professionis solent, non tenentur.

Resp. illud requiri a theologis, et canonistis intelligi [illegible]

[illegible]

[illegible] intelligendum venit, quod [illegible]

[illegible] incidunt [illegible]

[illegible] Dein [illegible]

[illegible] conveniunt [illegible]

[illegible] servit [illegible]

[illegible] sententia [illegible]

[illegible] sine iusta causa et auctoritate [illegible]

[illegible]

[illegible] ab onere restitutionis immune est, si damnum evenerit [illegible] [illegible]

[illegible]

[illegible]

[illegible] non [illegible]

[illegible] facere [illegible] jure suo. [illegible] jure: nemo damna [illegible]

qui id facit, quod facere jus non habet. Unde [illegible], eum teneri ad compensationem [illegible]

[illegible]

[illegible]

[illegible] [illegible]

[illegible] damnum [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Deinde damnum illud est satis voluntarium in ista actione [illegible] tanquam in causa

[illegible] asserere auctoritate [illegible] Praeceptoris, cujus doctrina [illegible]

[illegible] etiam argumento praesenti. [illegible] quaest. [illegible]

[illegible] quod non est actu [illegible] actionis [illegible]

[illegible] aliud quod causam [illegible] removere prohiberet. Unde ille [illegible]

[illegible] homicidium si [illegible] incurrit [illegible]

[illegible]

[illegible]

[illegible] operam rei illicitae vel etiam dat operam rei licitae non [illegible]

[illegible]

[illegible] ... animae ... [illegible]

[illegible]

[illegible]

[illegible] ... astro [illegible]

... cum nunquam damnum eveniat nullae ... [illegible]

... nulla cautio requiratur, cum nullum periculum ... [illegible]

[illegible]

... interitum ... non est homicidii reus.

... de restitutione ... [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

..., aut ... quod ... ex parte modi, ut [illegible]

[illegible]

[illegible]

... ratione ... aut gradus [illegible]

[illegible]

[illegible]

[illegible]

... actionem in iudicio ... candidatus habet ...

... positis

Resp. primo ... [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

ton

[illegible]

proinde ad restituendum tenetur. ergo etc.

[illegible] ad tamen [illegible] vel famae si calumniatur, vel detrahit

[illegible]

[illegible] impediat, et ut perfecte [illegible] vel reparari debet

[illegible]

[illegible] afferent, nihil et cant[illegible]

ius

Sed estne obligatio restituendi pro ratione oneris, et nocivi, si qui certus sit [illegible] actione, justa a se posita et p. se sufficiente ad inferendum damnum [illegible] ex alia causa?

[illegible] valet, quamvis de contraria sententia non constet [illegible] ex illa actione derivatum est ex hac [illegible]

[illegible] ex justitia [illegible] non [illegible]

[illegible] Probo [illegible] non habet jus, nisi in libera [illegible]

[illegible] ac proinde nec esse injuria [illegible] auctor sim est voluntarius [illegible]

[illegible]

Sect. II
De onere restituendi ratione rei acceptae.

[illegible]

[illegible] eiusmodi valent esse aut bona aut dubia aut malae fidei. De hac triplici possessore sup[ra] [illegible] egimus.

Possessor [illegible]

[illegible]

[illegible]

[illegible] sunt de rerum fructibus, et expensis.

Nomine fructuum intelligi solet utilitas omnis, quae ex re aliqua [illegible]

[illegible]

[illegible]. Fructus naturales sunt quos res [illegible] sponte producit nulla aut vix aliqua ho-minis labore seu industria concurrente ut sunt animalium foetus, arborum poma, herbae, et

juxta hac fructus [illegible] decursus.

Industriales, quos ex [illegible]

[illegible]

[illegible]

[illegible] artifex [illegible]

[illegible]

Fructus mixti vocant, qui partim ex ipsa rei natura, partim ex industria prove-

[illegible]

[illegible] an vero [illegible], seu quorum ex rerum natura fructum [illegible]

[illegible] in bona conscientiae arbitrio viri prudentis dubia [illegible]

Fructus mixtis [illegible] illi [illegible]

tas quos aliquis ex ius sibi competens percipit. [illegible]

rerum, quae usu [illegible], ut [illegible] jumenti [illegible]

Persona qui res alienas possidet [illegible]

[illegible]

[illegible]

ut

[illegible] extiterit in hunc casum sit aut [illegible]

[illegible]

[illegible]

[illegible] victus essent ut sunt viridaria et arma [illegible] incrustatio [illegible]

[illegible]

Queres 2do. utrum ille qui rei alienae bona fide consumpsit [illegible]

[illegible]

Resp. nullus est titulus, ex cujus ejusmodi possessor restituere quidquam debeat [illegible]

[illegible] e venditione non teneri ad [illegible]

[illegible]

[illegible] sive bona sive res aliena sive [illegible]

Queres 3tio, an qui emit se rem alienam habet, ad ejus restitutionem [illegible] opportune teneatur, ut primum novit esse alienam

[illegible] ex lege 2 ff. de petitione hereditatis. Ratio est, quia dominus [illegible] possidendi rem suam ergo jus ejus violat qui rem ejus retinet. [illegible]

[illegible]

[illegible]

[illegible]

[illegible] pretium illud a venditore repetere juxta leg. 2 ff. de emtio [illegible] vel [illegible] absque omni consensu [illegible]

[illegible] nec [illegible] potest rem suam vendere aut [illegible] Quod si non [illegible]

[illegible]

[illegible] vel insuste acceptam [illegible]

[illegible]

vel extantes fructus restituere.

[illegible]

[illegible] restituere [illegible]

illi [illegible] cujus [illegible]

[illegible]

[illegible] alienus [illegible] alio [illegible] valet [illegible] et

[illegible] mere [illegible]

[illegible] mater [illegible] tunc etiam non rei [illegible]

[illegible] ex aliena [illegible]

[illegible]

[illegible]

[illegible]

[illegible] quae ex hypothesi aliena e non pertinet

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] quae, jam

te sunt naturales, cum eadem est ratio.

[illegible] hanc [illegible] restitutionem [illegible]

[illegible] colligeris [illegible] ut [illegible]

[illegible] non [illegible]

[illegible] aliena [illegible] aliena [illegible]

[illegible] in restitutione [illegible]

[illegible]

[illegible]

[illegible] an possessor bonae fide [illegible]

[illegible] posset vero dare eu differentia inter pos-[illegible]

[illegible]

non existat in qua eq facile [illegible] preto aute [illegible] possessor non dice

[illegible] citato. Statuta aute [illegible]

in Patriae capitibus [illegible] in re praesenti decernunt [illegible]

[illegible] possess [illegible]

[illegible] il possessore [illegible]

[illegible]

[illegible] doverannesser [illegible]

[illegible]

[illegible] res, aut [illegible]

[illegible]

[illegible]

[illegible] non omino non sit

[illegible]

[illegible]

[illegible] sunt prout ejus labor, et industria valet

[illegible] quaerit [illegible]

[illegible]

[illegible] quae [illegible] aliena [illegible]

[illegible] ex bonis [illegible]

[illegible] res aliena [illegible]

[illegible]

[illegible] causa [illegible]

[illegible]

[illegible] nisi ex capite [illegible]

[illegible]

[illegible]

[illegible] quod in corpore patrimonii retineb[illegible].

[illegible] exemplis illustro [illegible] comedi [illegible]

[illegible] aliena quae [illegible] in mea [illegible] ea habeo. si nihil ex mea re comedissem, [illegible] nihil tenerer [illegible] in nulla re [illegible].

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] aliena [illegible]

[illegible]

[illegible]

[illegible]

[illegible] cogno[illegible]

cognita veritate restituere praetermiserat.

[illegible] sit aliena restituere [illegible] habet [illegible] Consequenter [illegible] restitutionis [illegible] habet [illegible] ita [illegible] vendis, et recepto pretio ex re aliena [illegible] et [illegible] habere deberes. [illegible] pretium [illegible] habeat [illegible] deberet. [illegible] emptori pretium teneris. [illegible] pretium ex [illegible] [illegible]

[illegible]

[illegible]

[illegible]

[illegible] huius [illegible] ex pacto [illegible] de suo [illegible] ve vel pro adversarii debent qui fidem [illegible] [illegible] non possit habere [illegible] [illegible] in solidum [illegible] tenetur [illegible]

Quid vero, si Paulus cui res furtiva venditur bona fide comparavit [illegible] pretio [illegible] venditione dissolvere et pretium [illegible] [illegible]?

Resp. [illegible] constituerit se [illegible] et Paulus [illegible] [illegible] paratus est ad restitutionem pretii [illegible] [illegible] vel ad restituendum contractum [illegible] [illegible] etc.

[illegible] ignorantia [illegible] [illegible]

[illegible]

Paulus

[illegible] [illegible] ... [illegible] ... [illegible] [illegible] ... [illegible] ... [illegible] ... [illegible] [illegible] ... [illegible] ... [illegible] [illegible] ... [illegible] ... [illegible] ... regula declarat.

Pro qua ponemus. [illegible] ... ratione iniuste ... [illegible] ... et damni ... [illegible] ... ex [illegible] ... [illegible] ... non [illegible], sed [illegible] ... aestimanda sunt. [illegible] ... domus [illegible] ex [illegible] ... [illegible] ... iniuria [illegible] ... [illegible] ... pensionis [illegible] ... [illegible] ... titulo [illegible] ... De [illegible] ... restitutione [illegible] ... III [illegible] ... cum integritate restituere [illegible] ... iniuriis [illegible] ... possessores [illegible] ... tractatu eodem.

[illegible] ratione. [illegible] iustitia et ipsa naturalis aequitas exigit ut qui [illegible] ... iniuria [illegible] ... et damna [illegible] ... restituat [illegible] ... indemnis [illegible] ... iniuria [illegible] ... restitueret [illegible] ... [illegible].

[illegible] ... [illegible] ... restituere. Si vero res ipsa non extat [illegible] ... [illegible] ... damnum [illegible] ... [illegible] ... etiam [illegible] ... si illa sua culpa pereat, [illegible] ex [illegible] ... emolumentum [illegible] ... [illegible] ... [illegible] ... [illegible] ... [illegible].

[illegible] possessor malae fidei debet restituere [illegible] [illegible] Veruntamen [illegible] [illegible] [illegible] [illegible] [illegible] damna [illegible] debet

[illegible] sunt [illegible] naturales [illegible] tamen [illegible] sunt [illegible] possessor [illegible] periisset, nec eo ipso [illegible] non in [illegible] perveniunt. Si autem [illegible] [illegible] in mora [illegible] sive extent sive non, sicut etiam non interest sive possessor habuerit [illegible], sive secus.

[illegible] detentor [illegible] [illegible] [illegible] [illegible] [illegible] quibus res melior, ac pretiosior effecta fuit. Hactenus certa [illegible] ad controversa procedo.

[illegible] possessor bonae fidei [illegible] [illegible] [illegible] [illegible] [illegible]

eo. vero ea non [illegible] ultima in [illegible] [illegible] [illegible] tunc etiam illi [illegible] mag[illegible] [illegible] [illegible] teneri [illegible] [illegible] [illegible] hac casu [illegible] [illegible] eum [illegible] perierit [illegible] [illegible] etiam apud dominum [illegible]. in [illegible] enim [illegible] [illegible] [illegible] dom [illegible] cujus [illegible] [illegible] [illegible] [illegible] aut jus [illegible].

Quando vero res: quae apud furem periit certo [illegible] apud dominum peritura erat casu fortuito, puta incendio naufragio etc. inundatione [illegible] [illegible] an fur [illegible] [illegible] [illegible] [illegible] immunis sit? attamen si res apud possessorem [illegible] [illegible] non perit eodem modo ac tempore, [illegible] apud dominum peritura, tunc [illegible] conveniunt hunc possessorem [illegible] restituendum teneri. ex. ca. si res incendio assumendas non ut domino servares, sed in tuum commodum liberasti, et eas [illegible] aliud incendium aut naufragium perdi[illegible]. [illegible] re altera incendio [illegible] aliter apud dominum peritura [illegible], et [illegible] [illegible] [illegible] [illegible] [illegible] illa [illegible] [illegible] [illegible] detinet [illegible] in mora [illegible] et qui in mora [illegible] teneri etiam [illegible] casu [illegible] cum mora trahat ad se periculum rei, ut jura decernunt [illegible] [illegible] [illegible] [illegible] [illegible] domino [illegible] [illegible] [illegible] debuit. at si non fuit reddita, injuria ipsi illata [illegible] [illegible] [illegible], quae extitit causa damni.

Id tamen [illegible] [illegible] [illegible] tempore [illegible] non tantum [illegible] [illegible] [illegible] tempore neque enim ad periculum [illegible] incursionis [illegible] [illegible] [illegible] [illegible] quanti [illegible] [illegible] illo periculo. Quare si tunc merces [illegible], et postea iterum [illegible] aestimationem [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] nisi [illegible] [illegible] [illegible] [illegible].

[illegible] si res [illegible] eodem tempore, eodem modo [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] perisset apud [illegible] non [illegible] [illegible] [illegible] [illegible] teneri. Sint casus [illegible] [illegible] [illegible], et ejus [illegible] merce [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] illa merce [illegible] [illegible], [illegible] [illegible] [illegible] furatus es equum morbo insanabili [illegible], qui sine

sine tua culpa [illegible] [illegible] [illegible] [illegible] [illegible] es [illegible] [illegible] [illegible] in acceptione [illegible], quam esse [illegible] [illegible] erat quia bonae. Adhuc hanc tenent Lessius Salmanticenses, et alii.

Verum opposita sententia [illegible] probabilius mihi esse [illegible] videtur, et prioris sententiae [illegible], licet speciosa appareant, non tamen sufficientia sunt. Ratio est, quia [illegible] injuste rem alienam aufert, facit damnum [illegible], quae intrinsece [illegible] indivisa [illegible] restitutionis [illegible] injusta acceptio evadere [illegible] per subsequentem casum [illegible]. Ita casus [illegible] excusat [illegible] non [illegible] ut injustus possessor damni [illegible] non [illegible] sed solum efficit quod damnum illud [illegible] ab alia causa [illegible] [illegible]. Qui igitur, qui semel [illegible] injuste acceptae obligatus e [illegible] [illegible] [illegible] subsequente non [illegible], seu obligatio jam contracta non extinguitur per [illegible] [illegible]. [illegible], qui injuste accepit [illegible] [illegible] se [illegible] injuste [illegible], semper e [illegible] [illegible], et per consequens ad restitutionem tenetur, etiamsi res pereat casu fortuito.

Objicies primo in [illegible], [illegible] [illegible] [illegible] [illegible] [illegible] possessor [illegible] [illegible] [illegible] morte, et casu erat [illegible] [illegible] [illegible] injusta acceptio nullam restit[illegible]

[illegible] causam damni [illegible] [illegible] [illegible] damnum [illegible] ex injusta actione [illegible] [illegible] casu fortuito, non minus [illegible] fuisse [illegible], quia [illegible] [illegible]

[illegible] [illegible] ejus [illegible] [illegible] [illegible] argumentum [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] interesse et casus fortuitus. Sicut [illegible]
[illegible] neque nisi [illegible] restitutionis [illegible]

Praeterea [illegible] restitutione [illegible] est [illegible]
[illegible] ex [illegible] compensationem esse [illegible]
[illegible] casu aliquid incommodi [illegible] damnum [illegible], quod [illegible]
[illegible] subiisset. Praeterea si res venit dolo, vel injuria injusta [illegible]
[illegible] servavit [illegible] tenet [illegible]
[illegible] ex communi sententia [illegible]
[illegible] nullum damno detrimentum [illegible] alterius [illegible]
erat

Obijcies [illegible] justitia solum postulat, ne in actione tua damnum [illegible]
[illegible] non aute, et [illegible] utilitatem [illegible] tua [illegible] colligat [illegible]
[illegible] ex tua [illegible] [illegible] certe aestimatione
[illegible]

Resp. negando [illegible] Domini [illegible] nulla [illegible]
[illegible] ille in [illegible] injusta
[illegible] loco [illegible] erat [illegible]
[illegible] non vero huius domino cedere debet

Obijcies [illegible] Lege ultima ff. de lege Rhodia de [illegible]
[illegible] navis conduxerit ad meas merces convehendas ipse vero Nauta me in[illegible] ~~merces~~
merces meas in navis deteriorem transtulerit; tenetur [illegible] de hoc damno si navis [illegible]
[illegible] et altera [illegible] salva evaserit [illegible]
[illegible] ea navigatione [illegible] merces meae in priori navi conducta [illegible]
[illegible]

[illegible] ad legem ad nostrum casum nullo pacto spectare, [illegible]
[illegible] injusta [illegible]

Quaeres [illegible] ad quid teneatur, qui res [illegible] merces [illegible]

surrexit, et ante [illegible] venditi est [illegible] ex ca [illegible] e vitulo eum statu servavit aut [illegible] citra si restituat pretium ejus valoris, quem vitulus [illegible]; an vero restituere debeat, quem eo tempore vitulus in servatus [illegible]?

Resp. cum distinctione. [illegible] statu venditum vitulum suum velut servatum [illegible] donec ad majorem statem devenerit, pluris valeret. Si [illegible], restitutio [illegible] cienda e [illegible] valore, quem vitulus tunc temporis habebat, quando ablatus, et venditus, aut consumptus. Ita justitia non exigit, nisi ut [illegible] damnum [illegible] reparet. Solum in [illegible] damnum [illegible] satis reparatur a [illegible] restituendo [illegible] pretium quod tunc vitulus [illegible] nisi [illegible] in eo statu vitulum [illegible] esset, non nisi hujus valoris pretium consecutus esset.

Si vero dominus servaturus vitulum [illegible] erat, donec in [illegible], [illegible] [illegible] crescerent, [illegible] S. Thoma aut [illegible] [illegible] [illegible] [illegible] perfecti [illegible] [illegible] inter damnum [illegible] non [illegible] [illegible] duo sunt: prima [illegible] [illegible] quas dominus [illegible] si vitulum [illegible] statu voluisset [illegible] ducere. Si tamen dominus [illegible] damno [illegible] caruit [illegible] [illegible] debet, [illegible] ut ait S. Thoma [illegible] damnum non [illegible] [illegible] ex [illegible], quia [illegible] habere [illegible]. [illegible] Qui autem [illegible] [illegible] illud [illegible] non habet [illegible] [illegible] [illegible] alterum [illegible] [illegible] valore [illegible] in [illegible] [illegible] [illegible] [illegible].

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] sunt.

[illegible] [illegible] illius qui [illegible] [illegible]

cum e injusto [illegible] Ut enim res [illegible] ad [illegible] facta [illegible] [illegible] debet totum damnum illatum reparare, [illegible] restituit valore quem res habuit in [illegible] deteriori et restituet [illegible] quem res habebat [illegible] ille totum illatum damnum non [illegible] enim tantum damnum [illegible] et tanti [illegible] valebat in eo statu et eo tempore, quo privatus [illegible] fuit.

Quaeres [illegible] si res quam [illegible] possessor [illegible] melior vel majoris pretii et adhuc extet, an [illegible] domino rem una cum [illegible] incremento

[illegible] Si [illegible] res extat semper sub jure domini manet et [illegible] [illegible] in substantia [illegible] [illegible] et [illegible]

[illegible]

[illegible] ex [illegible] extet [illegible]

[illegible] non [illegible]

[illegible] reddi debet [illegible] tritici tempore quo [illegible] valebat [illegible] [illegible] tritici, vel ex consensu domini [illegible] juxta rei incrementum [illegible]

[illegible] non extet [illegible]

[illegible]

[illegible] majori [illegible]

[illegible]

[illegible] debet [illegible] debet [illegible]

[illegible]

[illegible] restitutionem [illegible]

[illegible] aut [illegible]

[illegible]

[illegible]

[illegible]

[illegible] dub. et hinc impediti causa [illegible] Scholio. Nec interest licet ea possit aut [illegible] in mora ac proinde teneti etiam de casu fortuito.

[illegible] tempore detentionis [illegible] [illegible] [illegible] [illegible] in re [illegible] habeat ut [illegible] teneri.

[illegible] ab ipso dño in statu detentionis vel similiter [illegible] aut [illegible] venderetur.

[illegible] in [illegible] injuste possessore [illegible] excedit [illegible] debebat [illegible] [illegible] per [illegible] detentione privatus fuerit re sua in optimo ejusdem [illegible] [illegible] [illegible] [illegible] hic facere videtur.

[illegible] in hac hypothesi, si hic restituat pretium rei juxta statum quo vel vendidit. Ratio est quia ad majus pretium non teneri ratione rei acceptae, cum [illegible] incremento nihil amplius [illegible] at statim [illegible] tamen [illegible] [illegible]

[illegible] deterior sive [illegible] sive in [illegible] consat [illegible] [illegible] [illegible]

[illegible] nullus [illegible] res exacta deterior aut cujus status deterior [illegible]

[illegible] restituat tanti [illegible] quanti si res ablata nunquam fuisset.

[illegible] licet speciosa appareat [illegible] tamen hac restitutione [illegible]

[illegible] eamque [illegible] spectato [illegible]

ad tempus [illegible] tamen [illegible] ablato [illegible] statu [illegible]

[illegible] justitiae quae [illegible] commutationi [illegible] Caetera [illegible]

[illegible] in hujusmodi [illegible] aequitatis [illegible]

De possessore [illegible]

Possessor bonae fidei [illegible] [illegible]

[illegible] de quo dubitasse [illegible]

vel voluntaria aut fortuita vel bona fide acquisivit incipit dubitare num alienа sit. Vide quae dicta sunt ubi de praescriptione

[illegible] convaserit

[illegible] tenere non teneri [illegible],

[illegible] vel [illegible] habeat ut decoritarius

[illegible] servat in [illegible]

[illegible] iudicare [illegible]

possessor bonae fidei [illegible] verum rei [illegible]

[illegible] conparavit [illegible]

[illegible] deductis expensis et pretio [illegible] res [illegible]

[illegible] nemo [illegible]

[illegible] quando res empta [illegible]

[illegible] et si [illegible] [illegible]

vel [illegible] expensis [illegible] Qui vero [illegible] aut [illegible]

re emit aliene, [illegible] communiter Theologi [illegible] te pretium [illegible] [illegible] [illegible] non [illegible] nec [illegible] vel maxime [illegible] [illegible]

Qui rem alienam [illegible] emit [illegible] bona fide [illegible] [illegible] contra iustitiam [illegible] rem alienam [illegible] [illegible] Si dominus [illegible] invenerit, rem [illegible] ei restituere etiam cum fructibus consumptis, nec potest pretium a se solutum exigere, quia [illegible] [illegible] [illegible] [illegible] seu conservet rem [illegible] alienam, [illegible] [illegible] [illegible] [illegible] retinendi tamen [illegible] [illegible] emit [illegible] dominium [illegible] adeptus est. Quod si [illegible] [illegible] [illegible] [illegible] [illegible] inclinationes animi [illegible] [illegible] [illegible] si vero [illegible] [illegible] [illegible] ab initio [illegible] ac proinde cum mala fide non debet [illegible] vel [illegible] tradere, quia [illegible] [illegible]

[illegible] et post [illegible] [illegible]

[illegible] [illegible] [illegible] si ejusmodi [illegible] [illegible] consumat [illegible] [illegible] [illegible] consumere [illegible] [illegible] possessor [illegible] in pretium [illegible] [illegible] [illegible] si non [illegible] [illegible] concurrente [illegible] [illegible] [illegible]

De iis qui sunt restitutioni ex ratione concurrentium.

Quemadmodum est ex [illegible] [illegible] eo [illegible] [illegible] qui [illegible] [illegible] causa [illegible] seu [illegible] qui consentiunt [illegible] ita [illegible] [illegible] [illegible] [illegible] non [illegible] qui proxime [illegible] damnum injuste [illegible], seu [illegible] concausa vocati, quia [illegible] in damnum proximo [illegible] concurrunt [illegible] influunt [illegible] [illegible] [illegible] [illegible] de injuriis [illegible] IX [illegible] [illegible] [illegible] damnum [illegible] damni ex [illegible] injusti [illegible] [illegible] [illegible] [illegible] [illegible] — Ratio autem est, quia quisquis [illegible] habet [illegible] [illegible] [illegible] directe vel indirecte, mediate vel mediate damnum [illegible] justa causa [illegible], et quod injuste illatum connexa cum obligatio restituendi ex injusta [illegible] [illegible], omnes qui aliquo modo injuste [illegible] causae sunt, restitutionem [illegible] contrahunt. Hinc Innocentius XI [illegible] propositione proscripsit n° 130 — qui [illegible] [illegible] [illegible] [illegible] [illegible] gravi damno [illegible], non tenetur de restitutione [illegible] damni illa [illegible] —

[illegible] [illegible] [illegible] ut quis restitutioni [illegible] requiri ut [illegible] [illegible] fuerit efficax causa damni. [illegible] [illegible] [illegible] ex damni causa [illegible] [illegible] damnum [illegible] aut causa [illegible] damnum [illegible] ita concurrit [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] damnum [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] non [illegible] autem [illegible] modis [illegible] [illegible] damno [illegible] seu [illegible] [illegible] causae [illegible], quae [illegible] [illegible]

jussio, consilium, consensus, palpo, recursus,
participans, mutus, non obstans, non mani[illegible]

jussio [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ad damnum proximi injuste inferendum [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] mandato [illegible] verbis [illegible] ex [illegible], nullo dito animo, [illegible] ex quo aliter [illegible] ferat, ut si [illegible] sed animus [illegible] mea [illegible] injuria summa mihi gratia faceret qui meum inimicum [illegible] Antequam tamen [illegible] ad hujusmodi [illegible] tabere tacitu mandati circumstantiae [illegible] mandantis, tum mandatarii spectandae sunt.

[illegible] [illegible] ecs [illegible] precibus, promissis, [illegible], muneribus, blanditiis, item [illegible] aut [illegible] nocendi ostendendo, [illegible] vent ad damnum inferendum. Et non [illegible], sed etiam qui ex ignorantia [illegible] [illegible] consiliarius teneri ad restitutionem damni [illegible] [illegible].

Consensus [illegible] restituendi non [illegible] consensus mentalis, qui in damnum [illegible] influere non potest; neque a mera complacentia de malo [illegible] hoc malum quia [illegible], sed illud non influat. Consentiens [illegible] [illegible] ille est, qui sua [illegible], favore, [illegible] [illegible] [illegible] in damnum [illegible] ita influit, ut ex ejus [illegible] [illegible] suffragio oriatur damnum.

Item [illegible] in [illegible] [illegible] [illegible] et mandato non [illegible]. [illegible] juris [illegible] non [illegible] eo, qui consentit damno jam pridem illato; [illegible]

[illegible]

[illegible]

[illegible] et [illegible] [illegible]

[illegible] [illegible] [illegible]

[illegible]

[illegible] non minus [illegible]

[illegible] habuit quam si ante [illegible] [illegible]

[illegible]

[illegible]

Rapso seu advocator [illegible] rauso [illegible] ad inferendum provocat [illegible] ex [illegible] [illegible]

[illegible] nomine conniventis et imprimis recipiens uxorem aut offensorem occidunt [illegible] ex [illegible] causa est ex damni secuti, et te instar consulentis habueris imo [illegible] [illegible] aliquod damnum tulerit [illegible]

[illegible] nonnumquam [illegible] [illegible] aut [illegible] debuerunt ex sua laude aut consilio [illegible]

[illegible] vitate, fiducia, consilio [illegible] ad damnum inferendum, vel ad non [illegible] [illegible] causa pretii [illegible]

[illegible] sed domi recipit vel personas cum [illegible] aut materialia instrumenta ut ad [illegible] qui non reprimit nec coercet famulos suos quos videt [illegible] et [illegible] protectioni et [illegible] causam [illegible] consumentes [illegible]

[illegible] et causis [illegible] tenet [illegible] non minus [illegible] in causa sunt

[illegible] male [illegible]

[illegible]

[illegible] et materialis. Procurator formalis est, qui [illegible] recipit [illegible]

[illegible]

[illegible] necesse. quia vel in injustis accusatione [illegible]

[illegible]

[illegible] animo vel miseros [illegible]

[illegible]

[illegible] consuetudini; quia [illegible]

[illegible] tamen [illegible]

[illegible]

[illegible] tenens se tamen [illegible] demum [illegible] cum hunc tamen concursus

[illegible] concurrit [illegible]

[illegible] concurrit. [illegible]

[illegible]

[illegible] non sit [illegible] tamen [illegible]

[illegible] de [illegible] in [illegible]

[illegible] in [illegible]

[illegible] non de [illegible] sed [illegible]

[illegible] illi [illegible]

[illegible]

aut arma [illegible] ad [illegible]

[illegible]

[illegible]

[illegible]

[illegible] conve-[illegible]

[illegible] qui non [illegible] non [illegible] non [illegible]

[illegible]. Non [illegible] dicitur, qui non [illegible]

non revellit. Non [illegible] incinorum [illegible] non denunciat, sive ante ne [illegible]

[illegible] damnum sive post damnum illatum [illegible]

[illegible] requiruntur. [illegible]

[illegible], qui ex officio tenetur malum proximi [illegible]

[illegible]

[illegible] tenentur [illegible]

[illegible]

[illegible] concurrant [illegible]

[illegible] ad damnum eius [illegible]

[illegible]

[illegible]

[illegible] Thomas [illegible] Quaestio 62 [illegible] non [illegible]

[illegible]

[illegible]

[illegible]

I.

[illegible]

[illegible] Jubens, consulens, consentiens. [illegible] tribuere, sufficere ut executor mandato consilii [illegible] ad damnum [illegible]; et nihil [illegible] [illegible] margine [illegible]. Ad causam [illegible] ex [illegible] [illegible] cuius ex hoc consilio [illegible] [illegible] tamen [illegible] ex [illegible] [illegible] [illegible] executor [illegible] influendo [illegible] [illegible] non vere [illegible] damnum [illegible] [illegible] sive non? An [illegible] [illegible] restitutionem [illegible] multitudinem [illegible].

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] separatis [illegible]

[illegible] substantiae, nostra enim actio [illegible] cuius actiones substantia separationis non e[st].
Hec sententia [illegible] in [illegible] tempore [illegible] cogentes merguntur. [illegible]
tem sibi caveant

[illegible]

[illegible] materiam [illegible]

[illegible] forsitan non audiuit.

[illegible] multi pariter sunt qui sustinent huiusmodi mandantes aut

[illegible]

[illegible] ni, nimirum mouerint hoc tempore, hoc loco, hoc instru[mento] etc. [illegible]

[illegible]

[illegible] dari quomodo [illegible] ut commune [illegible]

[illegible]

[illegible]

Ad [illegible] adversariorum respondetur hoc modo. [illegible] nostri [illegible] [illegible]

[illegible]

[illegible] erat diversa numero. [illegible] [illegible] inducendo novas circumstantias, quae [illegible] ad debitum [illegible]. [illegible] teneris restituere [illegible] [illegible]

[illegible]

[illegible] Haec in communi nunc ad particularia [illegible]

De mandante

[illegible]: mandans tenetur non modo restituere damnum ejus [illegible] [illegible] propter ejus intentionem, aut etiam prohibitionem evenit.

[illegible] circumstantias [illegible] [illegible] [illegible] circumstantiarum providere poterat [illegible] vicina [illegible] [illegible] iter excipiant et mors inde sequatur licet [illegible]

[illegible] IV. [illegible]

[illegible] aliquem verberari licet [illegible]

[illegible]

[illegible] necessitat. mandans non tenetur, nisi [illegible]

Queritur: vtrum [illegible]

[illegible]

[illegible] revocari potest etiam equivalenter ut si mandans cum adversario [illegible]

[illegible]

[illegible] mandati [illegible] satis obstet et [illegible]

[illegible]

Queritur: vtrum mandatum revocare [illegible] teneatur cum [illegible] acceptum et [illegible]

[illegible]

[illegible] mandans non tenetur [illegible]

[illegible]

[illegible] damnum [illegible]. [illegible] non tenetur [illegible] satisfacere [illegible]

[illegible]

[illegible]

[illegible]

cum conjunct.

[illegible]

[illegible] Resp. Taciturnitas [illegible] [illegible]

[illegible]

[illegible]

Respondere solent in distinctione. Vel mandans [illegible] [illegible]

[illegible]

mandantis ad [illegible] [illegible]

[illegible]

[illegible]

[illegible]

Resp. [illegible] consultando [illegible] ad [illegible] restituendi in quantum non [illegible] majus damnum determinatus erat [illegible]

[illegible]

[illegible] damno majori. [illegible] ex [illegible]

[illegible]

 [illegible] non licet in

[illegible] ad non faciat [illegible]

[illegible] non ē [illegible] tamen in se [illegible]

[illegible]

[illegible] eidem [illegible] retrahit, ambo advertit [illegible] tenent; [illegible] tenet, [illegible]

[illegible] latroni: ut [illegible] tamen [illegible]

[illegible] Paulus [illegible] ne sibi damnum [illegible]

[illegible] ad avertendum [illegible] majus [illegible]. Advertendum tamen, si Paulus esset vir

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Quaeritur [illegible] restitutioni [illegible]

[illegible]

ad revocationem [illegible]

R. [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] nociet [illegible] a restituendo [illegible]

[illegible]

[illegible]

[illegible]

[illegible] adversus [illegible] partibus, aut promissis [illegible], deinde serio hec omnia revocet. [illegible]

[illegible]

[illegible] seipso.

[illegible]

[illegible] vel [illegible]

[illegible]

[illegible] ubi provenit mandatarius [illegible] non egit nisi nomine mandantis nec male [illegible]

[illegible]

non imputa mandantis [illegible]

[illegible]

[illegible] ipso tamen causa [illegible] vulner [illegible]

 [illegible]

tamen non est improbabile [illegible] restitutionis [illegible]

[illegible] admoneat ut sibi consulat. sicut cujus voluntate [illegible]

[illegible]

[illegible]

[illegible] malitia [illegible]

[illegible]

[illegible] sed a malitia [illegible]

[illegible]. Hanc opinionem defendunt Salmanticenses, quos citant Bonacina, [illegible]

[illegible] citant [illegible].

De consentientibus

Quaeres: quando teneantur ad restituendum, qui cum aliis concurrunt [illegible]

[illegible]

[illegible] aliquod aliud damnum inferendum consentiunt.

[illegible]

[illegible]

[illegible]

[illegible] est

hunc, qui ignorat an aliorum suffragiorum numerus ad id [illegible] secreto, et [illegible]

[illegible]

[illegible]

[illegible] esset [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible], in cujus damnum inferendum concurrit [illegible]

[illegible] dissentiones et [illegible]

[illegible] consentiens [illegible] suffragatione et [illegible] Hanc sententiam [illegible]

[illegible] sed hoc [illegible] communis [illegible]

[illegible] nihil efficere est non [illegible] hanc vel [illegible]

De participantibus

[illegible] an teneatur [illegible] qui concurrit ad maleficium [illegible]

[illegible] sive mediatè [illegible] in [illegible] concurrunt [illegible] actus [illegible] contentionis [illegible]

[illegible] actiones [illegible] injusta [illegible]

[illegible]

[illegible] differenda [illegible] exonerandae provinciae [illegible]

[illegible]

[illegible] aut [illegible]

[illegible]

[illegible] in iis [illegible]

[illegible] tamen [illegible]

[illegible] Deinde [illegible]

[illegible] conventiones [illegible]

[illegible] si [illegible]

[illegible]

[illegible] argumenta [illegible] videamus.

[illegible] de se [illegible] auxiliis [illegible] ad [illegible]

[illegible] accessionis. [illegible] non [illegible] rationabilior [illegible]

[illegible]

[illegible] se [illegible]

[illegible] proponere, [illegible] et [illegible] projicere [illegible] perpetrat [illegible]

[illegible] hunc [illegible]

[illegible]

[illegible] sententiae [illegible]

[illegible] restitutioni [illegible] ad [illegible] est

[illegible] secundum [illegible]

[illegible] circumstantiis [illegible]

[illegible] circumstantiis [illegible]

[illegible] intrinsece [illegible]

[illegible]

[illegible]

[illegible]

[illegible] intrinsece [illegible]

[illegible]

[illegible] hic et nunc [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] eandem rationem [illegible]

pose

posse christianus [illegible] [illegible] proximo [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] christianus [illegible]
[illegible] [illegible] tormenta [illegible] [illegible] [illegible] [illegible]
[illegible] mala illa actio [illegible] [illegible] [illegible], etiam [illegible] [illegible].
ob eandem [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] neque
[illegible] [illegible] [illegible], nec [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]. Debet enim [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] injustam [illegible] acceptione
[illegible] [illegible] hac [illegible] [illegible] [illegible] ante injusta [illegible], ultro-
te [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]. Haec autem
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible]. Nam si [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] cur non [illegible] ad
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] proximi [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible].

De [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] obnoxius [illegible] [illegible] [illegible] [illegible]

negative promisse habet, [illegible] actu mortis [illegible] [illegible] ratione [illegible] [illegible].

vel illa, minime acceptis [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

et [illegible] pecunia non accepisset [illegible] vel non [illegible] vel non tal[illegible] [illegible] et [illegible]

cisset. Qui vero [illegible] [illegible] ille pretio gratis [illegible] et non [illegible] [illegible] [illegible]

Dico tunc etiam [illegible] ad restitutionem teneri: [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

sic injustum [illegible] [illegible] [illegible] [illegible] majori cum [illegible] patret.

[illegible]: damnum [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] pecunia

accepisset, [illegible] [illegible] [illegible] non [illegible] [illegible] tacere citra injustitiam et

[illegible] [illegible] [illegible] [illegible] tacere non [illegible] [illegible] aut non accepta [illegible]

dio, [illegible] [illegible] post pretium acceptum.

Resp. concedendo maj. [illegible] [illegible] [illegible] Concedo, nego maj. [illegible] [illegible]

charitate damnum [illegible] teneris et non impedis non peccas contra justitiam [illegible] [illegible] non

habeat [illegible] ut damna [illegible] [illegible]. Non obstante non [illegible] [illegible] non [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible], [illegible] damnum [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] restitutionem. [illegible]

positionem minorem, quia, ut ostensum est, [illegible] [illegible] [illegible] [illegible] damnum [illegible] et [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] ne [illegible] damnum [illegible] [illegible] [illegible]

[illegible] [illegible] contractus ne [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] voluntate [illegible] [illegible] [illegible] [illegible]?

Resp. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] vel [illegible] [illegible] [illegible] ex justitia [illegible] [illegible] ne [illegible] [illegible]

[illegible] damnum [illegible] impedis in [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible].

Si vero Caius [illegible] teneatur tantum ex charitate [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] sine [illegible] [illegible] [illegible]

134 a debito restitutionis [illegible], quia mandatum Caji fuisset non [illegible] nulla sit Lucio injuria. Si vero [illegible] Cajo suadeas ne Lucii damnum [illegible], vera Lucio [illegible] et cum onere restitutionis conjuncta; injuria; quisque jus habet, ne quis ejus defensionem et bonum impediat per vim aut dolum.

Quaeres. 3tio. custos [illegible], mercium silvam a bono merce [illegible] ut exigat, et non impedit damna [illegible] sunt damna reparanda, teneturne ad [illegible] ablationem damni, quod oritur ex sua negligentia aut dissimulatione?

Resp. affir. ex communi sententia. Nam custos ille ex pacto et stipendio ad haec damna sua custodia et delatione impedienda obligatur. Dices: de custodibus a Principe constitutis, ne merces aut caballi aut [illegible] non soluta gabella. Nam eorum officium est, ut solutione [illegible] [illegible] ac principe [illegible] tenentur, si merces vectigali obnoxias gratis intrare permittant.

Quaeres: 4tio. ut custos, cujus dissimulatione introductae sunt merces, solum teneatur, quod iisdem mercibus [illegible] a mercatore [illegible] erat, an vero teneatur etiam ad mulctam pecuniariam, vel [illegible] [illegible] constituta est?

Resp. multos esse qui negant, hujusmodi custodem teneri etiam poenalis [illegible] quae a [illegible] vendita erat, si accusati a custode fuissent. Ratio est: quia custos constituitur, non ut Princeps locupletetur ex lucro poenarum, seu custodis [illegible] non est procurare mulctas. Ergo quamvis [illegible] requirat, non agit contra [illegible] vel pactum, ideoque non tenetur ad mulctam pecuniariam, quae a reo denunciato [illegible] deberetur. Custos enim debet denunciare [illegible], non tamen ut domini mulctam habeant, sed ut impediatur ne illi damna patiantur, et ut [illegible] [illegible] [illegible]

[illegible] tuens [illegible] Princeps [illegible] ut porta custodibus committit, intendit primo, ut vectigalia exigant. 2do, ut tum principis occupent omnes merces qui vectigalia non solverunt. 3tio, ut impediant damna et delinquentes [illegible], [illegible] bono communi et avertant nimia detrimenta, quæ alias [illegible] sublato metu [illegible], [illegible] [illegible] et Princeps [illegible] quod [illegible], aut commodi mercatoribus [illegible] omnibus amisit. Præterea ex officiis [illegible] emolumenta [illegible]. Ergo [illegible] non requiri [illegible] jus quod Princeps [illegible] ad merces, [illegible] ipso quod quis contra leges hujusmodi [illegible] Cujus sententiæ adhæreo.

Resp. [illegible] quantitate [illegible] illati, [illegible] [illegible] [illegible] cat.

Quæres 3tio: contrahit ne obligationem [illegible] [illegible] [illegible] exeat:

Resp. [illegible] [illegible] tenere [illegible] [illegible] obligatione [illegible] ex [illegible] [illegible] defendere [illegible] [illegible] tacito, ut [illegible] servat [illegible] exeat

Resp. 2do ex [illegible] sententia, teneri [illegible] [illegible] et tamen [illegible] [illegible] exeat.

Resp. 3tio plures Theologos esse, qui [illegible] quando bona quæ a domesticis rapiuntur, non sunt ei [illegible] [illegible] tenetur [illegible] [illegible] [illegible] [illegible] [illegible] peculiariter commissa est. Hæc tamen [illegible]

[illegible]

Sectio II.

De ordine quo [illegible]

servare in restituendo debent, atque … in solidum

[illegible]

[illegible]

ni DD. sententia servanda e.

3tio loco, et ante omes teneq [illegible] pervenit.

1mo si res aliena extat in se vni ea habet teneq titulo rei accepte [illegible] omnium priuy [illegible] maxima et res aliena [illegible] cie semper [illegible] ille ad quem res aliena servans, ead consumpsit vel alienavit mala seu dubia [illegible] adhuc prę cęteris teneq [illegible] tio restituere etiamsi ex re illa non factus sit ditior. Ita, ut habet regula, [illegible] 36. in 6to propossessore habet [illegible] possidere. 3o [illegible] res aliena [illegible] dubia [illegible] consumpsit [illegible] Ergo etc. [illegible] obtinuit consumpsit aut alienavit [illegible] ex iniquitate [illegible] fecerit [illegible] restitutione [illegible] res aliena [illegible] cęteris et [illegible] [illegible] non destructa [illegible] facere debebit. Demum cui ex re aliena [illegible] [illegible] prę cęteris [illegible] quum e ut prę cęteris [illegible] ditionis.

[illegible] et consumpsit vel [illegible]

[illegible] si vero aliquis ex sociis [illegible] [illegible]

[illegible] ad restituendum vel [illegible]

[illegible]

[illegible] et nullus [illegible]

[illegible] iuvenor, sed tamen vi metu mersu, aut dicendo [illegible] qui iussit ad damnum suo nomine inferendum. Hic enim mandan[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] restituere [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] Praeterea iuxta multos inter mandantis se habet qui damnum suo nomine [illegible] [illegible] [illegible] quia [illegible] [illegible] causa [illegible] [illegible] [illegible] quae movet caeteros, ideoque ante caeteros tenetur.

Hic [illegible] executor [illegible] executor restituere debet. [illegible] post eum, qui iussit vel suo nomine [illegible] [illegible] [illegible] causa damni [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] debent [illegible] non tenetur. Si tamen plures iniit consilio et animi consensu [illegible] [illegible] [illegible] [illegible] nomine [illegible] executores [illegible] reddere tenentur.

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] causa [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] consulens et executor [illegible] restituunt vel omnia notuntur [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] principalem et secundariam, sed omnes quae sine ordine [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] causa [illegible]

pariter influunt [illegible] damnum [illegible] gradu [illegible] damni [illegible] concurr-

[illegible] damni consulens [illegible] [illegible] gradu in causa [illegible]

[illegible] neque [illegible] unus ex his e [illegible] [illegible] [illegible]

alterius [illegible] [illegible] [illegible] [illegible] alteri [illegible] [illegible]

mediante altero vel alterius nomine [illegible] [illegible] in ordine suo. et licet

[illegible] [illegible] alii aliis [illegible] [illegible] una [illegible] [illegible]

[illegible] voluntate illius qui damnum [illegible] et licet non [illegible]

[illegible], tamen alia plus et alia minus [illegible] [illegible] [illegible]

[illegible] contero [illegible] magis [illegible] [illegible] [illegible] [illegible]

[illegible] sine qua damnum absolute non [illegible] [illegible] [illegible], qua [illegible]

causa [illegible] sine qua [illegible] [illegible] damnificatus [illegible] [illegible]

vel [illegible]. [illegible] contingere [illegible] ut concurrens ad minus [illegible] [illegible]

[illegible] [illegible] ratione [illegible] [illegible] fuerit.

Ultimo loco post [illegible] causas [illegible] et [illegible] [illegible]

restitutionis [illegible] [illegible] causa negativa seu causa non [illegible]

[illegible] ex justitia [illegible] [illegible]. Nam causa [illegible] minus ac [illegible]-

tiva ad damnum concurrit, quam positiva; positiva enim damnum [illegible]

[illegible] influxu [illegible] [illegible]. negativa vero nullo modo movet et inclinat ad dam-

num [illegible] non [illegible] causa [illegible]. Praeterea causa negativa

non tenetur [illegible] [illegible] [illegible] damnum [illegible] consentire [illegible]

[illegible] damnum [illegible] non obest [illegible] non [illegible] [illegible]

[illegible] [illegible] damnum [illegible] [illegible] concurrit [illegible] [illegible] cau-

sa [illegible] [illegible] causa [illegible] [illegible]

dicto, [illegible] [illegible] negligentia [illegible]

[illegible] [illegible] [illegible], aut [illegible] [illegible], ut causa [illegible]

[illegible], [illegible] [illegible], ac proinde instar positivae in [illegible]-

ne

fore deleverat

Inter has causas negativas non est aliqua [illegible] communa non [illegible] [illegible]. [illegible] non proxima seu quae se habent ad [illegible] [illegible] tamen aliqua [illegible], [illegible] damna [illegible]. Quare [illegible] [illegible] sicut [illegible] [illegible] primaria, [illegible] impediendi, ita [illegible] con[illegible] [illegible] damni. [illegible] [illegible], si [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] non [illegible] [illegible] [illegible] pervenit damnum isto

Quae hactenus dicta sunt, spectant ad eos, qui in damnum [illegible] [illegible] [illegible] [illegible] aequaliter [illegible] [illegible] [illegible] aequaliter, seu [illegible] ad restitutionem [illegible]. [illegible] [illegible] plures [illegible] [illegible] [illegible], aut [illegible] [illegible] non [illegible] [illegible], [illegible] [illegible] [illegible] quod alter. Ergo singu[illegible] [illegible] parte [illegible] [illegible] [illegible] de restitutione in solidum.

Conclusio.

Quando [illegible] [illegible] aequali sive inaequali influxu ad [illegible] damnum [illegible] concurrunt ut singuli conferant in actione [illegible], et singuli sint causa [illegible] [illegible] aut negativa [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] non [illegible] [illegible] [illegible] [illegible], vel [illegible] non [illegible]

[illegible]. [illegible] [illegible] causa totius damni [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] singuli [illegible] [illegible] causa totius damni [illegible] [illegible] [illegible] [illegible] damnosa [illegible] [illegible] damni [illegible] [illegible] [illegible] [illegible] [illegible] a singuli[illegible] [illegible] [illegible] [illegible] [illegible] restituendi [illegible] [illegible] [illegible] eo quod alter [illegible] [illegible] [illegible] [illegible] damnum [illegible] [illegible] [illegible] [illegible] perusset [illegible] [illegible] ipso [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] socio [illegible] non [illegible] et sic uterque totius damni causa [illegible].

Hinc multo magis [illegible], [illegible] in [illegible] [illegible] [illegible], qui [illegible]

concurrit ad damnum, et sola quæ actio satis esse esset ad illud creandum. licet non [illegible] damnum creaverit ut si duo latrones [illegible] mutiplant [illegible] [illegible] simul occidant. Ita ceteris actione sua se in [illegible] a singulis [illegible] [illegible]. Ideo qui ita concurrit ut sine ejus [illegible] effectus non [illegible] est [illegible] causa [illegible] [illegible] qua [illegible] [illegible] non [illegible] sine [illegible] [illegible] totus effectus seu [illegible] [illegible] ad unicum [illegible] deinde uno deficiente [illegible] a reliquis [illegible] non potuisset. Propterea licet singuli non [illegible] totum [illegible], singuli tamen illud impedire potuerant. [illegible] auxilii, sine quo effectus reipsa non [illegible] et qui damni [illegible] in [illegible] causa tam [illegible] ac uno conjuncti ac si solus [illegible], quia [illegible] [illegible] influere damnum nec in [illegible] nec in parte illatum esset. Hinc [illegible] [illegible] [illegible] [illegible] occid. — si duo [illegible] re una [illegible] [illegible] [illegible] quos singuli [illegible] non [illegible] [illegible] in solidum tenentur — Tertio si [illegible] [illegible] [illegible] [illegible] auxerat [illegible] [illegible] etiam in solidum tenetur quia nulla e damni pars in qua reipsa non influxerit.

Objicies. Cum plures [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] sent, hi [illegible] non sunt singuli causæ [illegible] et sufficientes, sed causæ partiales ex quibus consurgit una causa [illegible], et [illegible]. Quando [illegible] [illegible] e tamen causa partialis, quæ [illegible] [illegible] [illegible] [illegible] [illegible] non [illegible] respondet [illegible] seu non [illegible] [illegible] sua [illegible] [illegible] [illegible] [illegible], et conjunctim cum alia concausa. Atqui si [illegible] [illegible] damnum [illegible] [illegible]. [illegible] [illegible] respondet: [illegible] non contrahit obligationem [illegible] integri damni [illegible] [illegible] [illegible]. [illegible] [illegible] ratio obligationis [illegible] causa [illegible] [illegible] [illegible] in damnum, nec [illegible] major [illegible] obligatio, quia [illegible] [illegible] [illegible] [illegible] [illegible] partialiter concurrit solum partialiter obligat.

Probatur si [illegible] [illegible] causa totius damni [illegible] [illegible] [illegible] [illegible] communi [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] causa [illegible] totalitate causæ [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] ad restitutionem [illegible] absolute [illegible] teneri tantum [illegible] et [illegible] restituant, [illegible] debent, cum quamvis non sit ut [illegible] quia in [illegible] suppleat [illegible] tamen cooperantes sint [illegible] caussa [illegible] effectus cum totum damnum [illegible] a singulis [illegible] vere [illegible] ut singuli teneantur ad integram restitutionem in hypothesi [illegible] non restituant.

Quaeres primo [illegible] restituente [illegible] a restitutionis debito liberentur.

Resp. [illegible] sententia causam magis principalis integrum damnum compensant [illegible] quod supra statuimus [illegible] omnes minus principales liberari. [illegible] minus principales tenentur solum in defectum causae [illegible] quae primario [illegible] sunt. [illegible] ille [illegible] liberi [illegible] teneri [illegible] Sed caussa [illegible] principalis totum reparare [illegible] causae [illegible] cum haec restituit [illegible] [illegible] quae satisfacit, ac [illegible] quod damnum [illegible] debebat [illegible] compensatione a caussa principali [illegible] caussa [illegible] compensent [illegible] quia illa [illegible] debet [illegible] restitutione [illegible] nomine [illegible] quod ipsa [illegible] habuisset. Deinde [illegible] principalis [illegible] sua iniquitate [illegible] primario [illegible] quod prius possidebat.

[illegible] pariter [illegible] ex caussis [illegible] ob[illegible] restituerit [illegible] parte, reparare [illegible] consilio [illegible] tertius [illegible] unus sit qui non [illegible] inter se [illegible] omnes pariter [illegible] [illegible]liter concausae damni

Quaeres [illegible] illi qui [illegible] a [illegible] solam [illegible] restituendi [illegible] remittit, [illegible] [illegible] restitutionis?

Resp. [illegible] causa principali [illegible] qui [illegible] tenent [illegible] communis. [illegible] causa principalis [illegible] amplius debendo nihil et [illegible] bent. Atqui in hoc [illegible] nihil [illegible] amplius [illegible] [illegible], [illegible] remissio quae illi facta fuit, ut velut [illegible] [illegible] [illegible] [illegible], non [illegible] efficere [illegible] ut [illegible] [illegible] restituere debeat [illegible] [illegible] [illegible] [illegible] eximit [illegible], qui prior obligat.

[illegible] si creditor [illegible] [illegible] qui [illegible] [illegible] [illegible] bet, [illegible] principalem causam adhuc ad restituendum teneri [illegible] obligatio [illegible] principalis habet non [illegible] ob obligationem, [illegible] in [illegible] causa [illegible] [illegible] [illegible] remissio sola obligatio causae [illegible] et illius [illegible] hic [illegible] a restitutione liberi, si causa principalis non [illegible] [illegible] [illegible] nihil [illegible] bet.

Resp. [illegible] quando [illegible] eodem gradu tenentur [illegible] [illegible] [illegible] [illegible] licet uni eorum perfecta remissio fiat, tamen [illegible] [illegible] liberare non [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] obligatio unius non [illegible] ad obligationem alterius, [illegible] [illegible] liber in damno influxerint [illegible] remissio [illegible] [illegible] [illegible] [illegible] tens, [illegible] quantum [illegible] [illegible] [illegible] [illegible] non [illegible] sit [illegible] [illegible], cujus, [illegible] intelligant [illegible] [illegible] [illegible] [illegible] remissa [illegible] [illegible] [illegible] cujus [illegible] [illegible] [illegible] aut non [illegible] [illegible] non [illegible] [illegible], cujus non tenet ad [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], seu [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] qui non [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] missio. [illegible] [illegible] [illegible], si ei nulla facta remissio fuisset. [illegible] remissio [illegible] [illegible] [illegible] [illegible] [illegible] remissio [illegible] [illegible]

[illegible], triplex [illegible] intelligenda [illegible] pacto [illegible] deberet [illegible] quas deberet uno recusante [illegible], [illegible], quos [illegible] solvere si alter socius restituere recusarit.

Articulus IV.

De circumstantiis restitutionis.

Restitutionis circumstantias his exametris complectimur:

Quis, quid restituat, cui, [illegible], quomodo, quando,
Quo ordine, quo loco, quae causa excuset [illegible].

Quis restituere [illegible] declaratum est. Quomodo [illegible] sit restitutio [illegible] distributiis optimo [illegible] restituit, qui [illegible] ad [illegible] peculiare examen exigit circumstantia quando. [illegible] tantum quis rem quando accepit, sive [illegible] sive [illegible] vel. [illegible] in acceptione rei [illegible] consideranda veniunt. Unum est ipsa acceptionis [illegible], ex [illegible] praesumptio [illegible] [illegible] acceptionibus [illegible] [illegible] modus ipse accipiendi, qui [illegible] non [illegible], [illegible] [illegible] contra [illegible] [illegible] Quantum ad [illegible] [illegible] remedium restitutionis, [illegible] [illegible] reparata [illegible] [illegible] quando [illegible] [illegible] remedii [illegible] [illegible] [illegible] [illegible] restituere [illegible] [illegible] [illegible] Nunc [illegible] circumstantias persequamur.

Sectio I.

[illegible]

[illegible] circumstantiis [illegible] sunt multa [illegible] [illegible] possunt [illegible] [illegible] confessione [illegible] [illegible]

[illegible] in utrum acceptum ob turpem [illegible], puta stuprum, vel [illegible] sit necessario restitutio [illegible].

Resp. in confesso apud omnes esse, mercedem acceptam ob tur[pem] [illegible] patrandam ante patrationem operis [illegible] restitui debere. Ratio est, quia merces [illegible] non [illegible] nisi ex pacto, ut accipiens se [illegible] ad opus malum patrandum [illegible] [illegible] [illegible] juxta [illegible] ultimam de pactis. Ob eandem rationem [illegible] omnes [illegible] mercedem alicui promittit ob [illegible] illicitam promissionem [illegible] jure na[tu]rali irrita est, et nullam obligationem inducit [illegible] [illegible]. Nemo [illegible] sibi aut [illegible] pacto [illegible] vel contractu necessitatem peccandi imponere [illegible].

Sed difficultas in eo est [illegible] promissio [illegible]
[illegible] patrato crimine [illegible] [illegible] [illegible]. Affirmant [illegible] [illegible] [illegible] [illegible] [illegible] hujusmodi [illegible] [illegible] vel accipiens fiat inhabilis ad acquirendum ejus dominium. Si lex aliqua positiva [illegible] [illegible] inhabilis vel irritet actus, ex quo pendet acquisitio dominii, tunc [illegible] [illegible] [illegible] per tales leges [illegible] [illegible] [illegible] [illegible] justa [illegible] [illegible] [illegible] [illegible] habet [illegible] [illegible] nullo [illegible] [illegible] [illegible] [illegible] transferret [illegible] ipse fiat per legem inhabilis ad recuperandum [illegible] restituendum [illegible] in [illegible].

[illegible] restituit [illegible] acquisitione [illegible] lata [illegible] inhabiles ad acquirendum rei [illegible].

[illegible] [illegible] per leges [illegible] [illegible] solum [illegible] [illegible] [illegible] [illegible] validam et ex operis executione non oriatur [illegible], idest [illegible] [illegible] [illegible] [illegible] [illegible], ex quo quis lucratur [illegible]

[illegible] mer requirendo [illegible] peccatit tamen teneretur contra [illegible] non fuit eo ideo [illegible] ait D. Tho. [illegible] in [illegible] 15. Quest. [illegible] et communi [illegible] communi hac [illegible] reverentia. Monent tamen confessarii ut [illegible] peccatoris prius caveant [illegible] opere [illegible] peccatis [illegible] [illegible] et si [illegible] [illegible] ad illud [illegible] ancias [illegible] nominis

Conclusio.

Omnia pacta et promissa quae pro scelere patrando [illegible] nulla [illegible] et pro [illegible] nocendo sunt sive ante sive post patrati operis [illegible] ac proinde accepta [illegible] causa ex contractu [illegible]

[illegible]

[illegible]

[illegible] ex debitate [illegible]

[illegible]

[illegible] tamen [illegible] non recte, vite redditione caruit, [illegible] quem debet — [illegible] mercia sunt, ut semper [illegible] fateant [illegible]

[illegible] intrinsecus [illegible] nulli [illegible] ergo nulli pariter sunt opere jam perpetrato, et [illegible] nec [illegible] pretio estimabile nec merx [illegible] meretur [illegible] poena

[illegible] pro. sicut alter in contractu onerosi [illegible] [illegible] deinde [illegible] licite [illegible] posito alterius [illegible] licite [illegible] valet [illegible] retinere [illegible]

Respo. sic distinguendo [illegible] sicut [illegible] in contractu onerosi [illegible] licite [illegible] reddita, [illegible] distinctio. at licet promit [illegible] nudo, ideo restitui debet [illegible]

[illegible] pretio estimabile [illegible] tamen [illegible] restitui [illegible] curavit [illegible] pro opere illicito [illegible] [illegible]

[illegible] non [illegible]

[illegible]

[illegible]

mi [illegible] sane et [illegible]

[illegible]

[illegible] administratione [illegible]

[illegible] a [illegible]

[illegible] a peccato. [illegible]

[illegible] pro [illegible]

[illegible] et circumstantia [illegible]

[illegible]

[illegible] matrimonio. [illegible]

[illegible]

[illegible] sub conditione [illegible]

[illegible]

[illegible] conditiones [illegible] non [illegible]

[illegible] matrimonio [illegible]

[illegible] conditione [illegible]

[illegible] contractus [illegible]

[illegible] conditione [illegible]

[illegible]

[illegible]

[illegible] ut peccata [illegible]
viaverit, ieiunia [illegible] aut alia [illegible] ex [illegible]
[illegible]

[illegible] liberaliter vendi, sed vat coacte, et a metu [illegible]

[illegible] vendi [illegible]

[illegible] aliter dicendum est si jus [illegible] liberalia [illegible]

[illegible]

[illegible]

[illegible] non [illegible]

[illegible]

[illegible] servandi adest quod ex iustitia non debitum, cum sit arctis aestimatione [illegible] ex iustitia ad id quod tale non erat debitum ex illa virtute.

Sectio II.

[illegible]

[illegible] ordinarie debet ei restitui, a quo accepta vel ablata [illegible]

[illegible]

[illegible]

[illegible] restitutio [illegible]

[illegible]

[illegible] Hinc [illegible] matrimonium [illegible] non [illegible]

[illegible]

[illegible] periculo aut amittendi mercedem, sed ne [illegible]

[illegible]

[illegible] Dominus [illegible] erant [illegible]

[illegible]

[illegible] Decreti iuris.

[illegible], an [illegible] restitutio Domino vel possessori, vel [illegible] re [illegible] in [illegible] vel [illegible]

[illegible]

[illegible] men debet ille [illegible] [illegible] Hæc doctrina [illegible] [illegible] nec grave damnum negandi non imminet.

Inquies: dominus semper jus habet ad repetendam rem suam. Ergo [illegible] rem ei petenti denegas, infers illi injuriam.

Resp. neminem habere jus ad id, quod non est secundum rectam [illegible] at sibi tunc fiat restitutio. [illegible] Tunc enim [illegible] at alterius gladium [illegible] Ergo etc.

[illegible] ex ea deberet [illegible] possunt hæc [illegible] ab ulteriori restitutione [illegible] faciendâ, quando utrumque debitum [illegible]

Resp. primo [illegible] Tunc enim nullam tibi injuriam facio, sed [illegible]

[illegible] debitori creditoris mei: [illegible] creditor meus [illegible] quia ut vere meus creditor [illegible] a me repeterent [illegible] Deinde Petrus neque creditor [illegible] satisfecerit [illegible] vel remittere vel [illegible] Debitum [illegible] Propterea nemo me [illegible] constituit [illegible] solvat. Demum si [illegible] liceret etiam bona auferre alicui [illegible] esse [illegible] deposita vel [illegible] ipso invento, aut etiam violenter [illegible] portas aperire. [illegible]

Resp. [illegible] solutione ita facta [illegible] aliud [illegible] ei vel [illegible] estimationi seu tantundem [illegible]

[illegible]

Quaeres [illegible] qui a Petro accepit aliquid [illegible]

[illegible]

Resp. cum distinctione. [illegible] a quo res accepta fuit, vel [illegible]

[illegible] possessa [illegible]

[illegible] sufficio [illegible]

hanc [illegible]

[illegible] et tum pretium repetere [illegible]

[illegible]

[illegible] incendio. supponimus enim in manu possessoris [illegible]

[illegible]

Si vero vel [illegible]

sicut tibi a [illegible] non. [illegible] contractum vero dissolvere [illegible]

[illegible] reaccipere, [illegible]

[illegible] dimiserit [illegible] vel [illegible]

[illegible] recuperare pretium a tuo libro

[illegible] magna diversio fieret, utrum possis contractum dissolvere [illegible]

[illegible] a tuo [illegible]

[illegible] nisi [illegible]

[illegible] Navarrus, [illegible]

[illegible]

non parum inter [illegible] doctrina [illegible] et [illegible]

[illegible]

[illegible]

[illegible] non ita [illegible] in manu [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] ut meδius [illegible] ego [illegible]

[illegible] habet. [illegible] conveniri [illegible]

[illegible] tenetur [illegible]

[illegible] communi [illegible] concurrit, [illegible]

[illegible]

[illegible] contractus, ac proinde in initio revocari debet [illegible]

[illegible]

cit.

[illegible]

[illegible]

[illegible] ad [illegible] meliori statu, unde res ha-
bet [illegible] aliter processerit. [illegible]
[illegible] culpa [illegible] deteriori conditi-
one [illegible]

[illegible] contractu [illegible]
[illegible] injuria tertii. Atqui tunc dicen-
dus contractus sine injuria tertii, ex quo tertius rationabiliter invitus esse
[illegible]
[illegible]
[illegible] Atqui [illegible] innocentia [illegible]
est causa, sicut ex illo dominus jus habet a [illegible] ita emptor jus habet ad preti-
um, et ambo innocentes esse supponuntur.

[illegible]
[illegible]
[illegible] venditoris malitia aut emptoris negligentia, vel
[illegible]

[illegible] causa damni, seu causa [illegible]
[illegible]

Hic [illegible] [illegible]
[illegible] in statu deteriori. [illegible]
[illegible] me habere circa [illegible]
[illegible]

[illegible]

III

[illegible]

ve aut incolis. idest ille [illegible]

ve et [illegible] [illegible]

[illegible]

tale [illegible] [illegible]

[illegible]

[illegible] [illegible] ignorantia excusat [illegible]

[illegible]

[illegible] spirituali proximi [illegible]

pane aut extrema necessitate [illegible]

[illegible]

[illegible] mortis [illegible]

[illegible]

[illegible] vacat hec [illegible]

[illegible]

[illegible] ... [illegible] mat.

[illegible] II

[illegible] ... [illegible]

[illegible] ... praeceptoris, qui quest. 62. [illegible]

[illegible] ... affirmat [illegible] indicat tamen in [illegible] ...

[illegible] ...

[illegible] ... consequenter [illegible] rest restituemus.

[illegible] ...

[illegible] rei alienae invito domino seu non restituere [illegible] ... [illegible] Maior

[illegible] ...

[illegible] I. [illegible] ...

[illegible] ... si [illegible] ... sua

[illegible] ... supplementis quaest. 6. [illegible]

[illegible] ... rei alienae invito domino

[illegible] ... semper: ideo tenet

[illegible]

[illegible] restituendum [illegible] [illegible]

[illegible]

[illegible]

[illegible]

[illegible] rationabiliter invite non est si quis, per [illegible]

[illegible]

[illegible]

[illegible] restituendi [illegible] hic animadvertas [illegible]

[illegible] circumstantiis [illegible]

[illegible] momen

[illegible] circumstantiis [illegible] executione [illegible]

[illegible]

[illegible]

[illegible] peccandi [illegible] satis [illegible]

Resol. II. [illegible] peccat [illegible] notabili tempore [illegible]

[illegible] solutionem [illegible] praestare potest. [illegible]

[illegible]

[illegible]

[illegible] culpa. [illegible] restituere, [illegible]

[illegible]

[illegible] peccat [illegible] momento [illegible]

[illegible] restitutionis [illegible]

[illegible]

[illegible]

[illegible] satis [illegible]

[illegible] debeat restituere, atque [illegible] obligatione [illegible]

[illegible]

Sed licet [illegible] rem alienam invito domino retinere [illegible] [illegible] si actus internus non restituendi [illegible] [illegible], aut actus externus detentionis [illegible], aut [illegible] [illegible] non restituendi retractetur [illegible] [illegible] [illegible] [illegible]

III. [illegible]

[illegible] occasione [illegible] [illegible] [illegible] [illegible]

IV. [illegible]

[illegible] de restitutione [illegible] si circumstantiae [illegible]

[illegible]

[illegible]

[illegible] re vera possint. Quod si primum non habeant [illegible]

[illegible] non possunt. Ita autem [illegible]

[illegible]

qui exiit [illegible] vult etiam [illegible]

[illegible] parte [illegible]

[illegible]

sine incommodo [illegible] restituere. [illegible] restitutionem [illegible]

[illegible] in testamento restitutione [illegible]

[illegible]

[illegible]

[illegible]

[illegible] et mercenarii [illegible]

[illegible]

[illegible]

[illegible] Mediolanensi [illegible]

[illegible] restituendi [illegible]

Haec de restitutione [illegible], intelligi [illegible]

[illegible] ex contractu [illegible] ex parte [illegible]

[illegible] causa [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

IV

[illegible]

[illegible]

[illegible] Atque hoc verum est sive [illegible] sive [illegible] [illegible]

[illegible]

[illegible] sedeat.

[illegible] est ideo, quod, quae ad [illegible], [illegible] [illegible]

[illegible]

[illegible] huiusmodi [illegible]

[illegible]

[illegible]

[illegible] vindicari posse, [illegible] [illegible], ad licet [illegible] vendi-

[illegible]

[illegible] certum pariter est, venditorem non habere ius, quo agens [illegible] creditoribus praeferatur, si res vendita apud emptorem non amplius extet in se sed tantum in aequivalenti [illegible] in [illegible] debitor [illegible] vel in [illegible] [illegible] in rei venditae locum succedunt, secundum se obligatae non sunt.

[illegible] venditor [illegible] creditoribus praeferri debere, ut [illegible] credunt, si non intenderit contrahi [illegible] conditionis [illegible] nec transferre in emptorem [illegible] rei [illegible] dominium [illegible] solutionem [illegible] tunc enim res manet [illegible] [illegible] [illegible] venditor [illegible] non [illegible] praestandum [illegible] tunc autem dominium non censetur esse translatum, quando emptor nec pignus [illegible] [illegible] in praesenti nec venditor [illegible] [illegible] [illegible] ut [illegible] in [illegible] [illegible] vendito [illegible] ad [illegible] non [illegible] [illegible] [illegible] solverit vel aliomodo [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] iure gentium [illegible] [illegible] naturali id [illegible].

Sed magna controversia est [illegible] [illegible] [illegible] sit aliis credit[illegible] [illegible] si [illegible] [illegible] idest si emptor pretium [illegible]-

[illegible]

[illegible] et venditor noluit [illegible] [illegible] in pretii [illegible] [illegible] traditio [illegible] venditor [illegible] [illegible] et [illegible] loco citato [illegible] fuit promissione pretii solvendi.

Conclusio.

[illegible] hanc [illegible] [illegible] [illegible] videtur [illegible] [illegible].

[illegible] [illegible] [illegible] venditae, et [illegible] in emptorem [illegible] [illegible] [illegible] illa consumere [illegible] vel aliter de ea [illegible] [illegible] disponere [illegible], et si [illegible] [illegible] venditor [illegible] pretium [illegible] [illegible] agere [illegible] [illegible] [illegible] [illegible] adversarii [illegible] si res illa [illegible] [illegible] est [illegible] venditori pro [illegible], ad quemcumque [illegible] [illegible] [illegible] deberet [illegible] [illegible], et venditor [illegible] [illegible] agere possit [illegible] [illegible] [illegible] rebus [illegible] [illegible] [illegible] res illa [illegible] [illegible] venditori [illegible] pretii [illegible] [illegible] in solo [illegible] [illegible] solvendum pretium [illegible] res illa se habet [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible].

[illegible] [illegible] [illegible] [illegible] [illegible] et [illegible] [illegible]

[illegible]

[illegible]

[illegible]

[illegible] [illegible] [illegible] Hde

[illegible] retinere [illegible] res [illegible]

[illegible]

[illegible] non [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible]

[illegible] res [illegible] [illegible] [illegible]

[illegible] quod [illegible] adversarii [illegible] [illegible] in [illegible] [illegible] non [illegible] vel hanc [illegible] [illegible] reddere. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] consentimento.

[illegible] et res mea [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] apud amicum [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] permutatione [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] nullimen [illegible]

[illegible] [illegible] [illegible] transeunt [illegible] [illegible] [illegible] aeterna [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] Hinc [illegible] [illegible] [illegible] concedit [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] cautio [illegible] domo mea [illegible] [illegible] [illegible] in [illegible] [illegible] obligata [illegible] [illegible] annua pensione [illegible] [illegible] [illegible]

[illegible] contra [illegible] [illegible] quod [illegible] [illegible] pro [illegible] [illegible] [illegible] jure [illegible] [illegible] [illegible] similis [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] certa [illegible] partes exigere [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] pignus [illegible]

[illegible] [illegible] [illegible] excerptione [illegible] juxta statuta municipalia [illegible] [illegible] [illegible] [illegible] di mercanti le vendono le lor merci [illegible]

vendono

quaunque altra persona, che vederà alcuna cosa [illegible], [illegible] e non [illegible] [illegible] [illegible] [illegible] [illegible] l'autorità [illegible] [illegible] venduta [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] in [illegible] [illegible] ma se sarà passata in altre mani non abbino alcuna [illegible] nella medesima.

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] S. Antoninus [illegible] [illegible] [illegible] [illegible] certa [illegible] [illegible] [illegible] [illegible] [illegible] debitis [illegible] [illegible] [illegible] [illegible] [illegible] certa [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] peat [illegible] [illegible] [illegible] [illegible] [illegible] Atqui [illegible] [illegible] [illegible] voluntarii [illegible] et quae [illegible] [illegible] [illegible] [illegible] Atqui voluntas [illegible] certa [illegible]

[illegible] [illegible]

Resp. distinguendo [illegible] [illegible] [illegible] in propria vel [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] creditorem [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] et consequenter [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] alia [illegible] [illegible] non [illegible] [illegible] [illegible] [illegible] [illegible] possit [illegible]

[illegible] impendi deinde debitor in nostro casu [illegible] et [illegible] uni exau mero [illegible] applicare [illegible] ut [illegible] ad restituendi, quando donum convaluerit et facultas aderit.

Quæres [illegible] an debito ex titulo [illegible] legibus ex titulo [illegible] diversi [illegible]

[illegible] communis [illegible] inter [illegible] de re judicata uti lex habeat [illegible] ex causa donationis conveniri [illegible] potest [illegible] si [illegible] alieno [illegible] contracto [illegible] ex contractu oneroso, [illegible] permutatione locatione [illegible] in [illegible] legati semper [illegible] executioni [illegible] sine detrimento [illegible] vel nisi status [illegible]

[illegible] legata [illegible] legimus [illegible] testamento [illegible] legata [illegible] personal [illegible] licet [illegible] bona quæ donavit aut legavit [illegible] donationibus aut legatis [illegible] titulo [illegible]

[illegible]

[illegible] persecuturi bona sibi donata [illegible] ut creditores [illegible] ex donatione [illegible] vel [illegible]

[illegible]

[illegible]

non

[illegible] ex, [illegible] majori [illegible] unius debiti, [illegible]

[illegible] hac super re cautum fuit, regula ratio satis [illegible]

[illegible] quae probat ex jure naturali [illegible] debitorum [illegible] [illegible]

[illegible] debitorum. [illegible]

[illegible] [illegible] quae debita prius [illegible] sententia [illegible]

[illegible] qui [illegible] conscientiae quando: [illegible] debita ex delicto, aut e contra [illegible] a debitore [illegible] contracta [illegible] prius esse solvenda, quae prius [illegible] debitor nova debita contraxit, [illegible] solvenda [illegible] et creditor ius certum ac legitimum in bona debitoris habebat [illegible] jus certum, ac legitimum [illegible] [illegible]

[illegible]

[illegible] debita ex delicto [illegible] ex contractu [illegible] constituere [illegible] ex [illegible] tertio [illegible] quando ex contractu [illegible] contracta [illegible] quando [illegible] non [illegible] conventam [illegible] [illegible] [illegible] [illegible] major injuria [illegible] major in [illegible] major [illegible] contracta [illegible] solvendum [illegible] quam [illegible] contracta in qua nulla injuria commissa est. Verum

[illegible] delicta sunt diversae speciei, [illegible] injuria [illegible] tamen [illegible] restituere [illegible] non [illegible] ex contractu et non solvere [illegible] et in [illegible] tamen

[illegible] maior obligatio restituendi, nisi pro [illegible] restitutio [illegible] be[illegible] agemus, sed [illegible] satisfactio [illegible] [illegible] peccata [illegible] in se est, [illegible] contrahit [illegible] [illegible] pro sola [illegible] [illegible] in hoc sensu, seu genus effectus [illegible] [illegible] furtis, aut rapina, illa peccata in hoc sensu [illegible] [illegible] ex [illegible] acceptione et detentione rei alienae procedat

[illegible]

[illegible] [illegible] stabiliorem [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] securitate [illegible] [illegible] occurrat.

[illegible] creatus, [illegible] satisfaciendi, [illegible] [illegible] restitutio posterior [illegible] [illegible] dictus [illegible] ex eo [illegible] posteriori, et [illegible]

[illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] ad conservandum vel [illegible] [illegible]

[illegible] servatum fuit, et sine illa [illegible] periisset aut deterior evasisset [illegible]

[illegible]

cxlll.93

[illegible]

[illegible] provest [illegible]

[illegible]

[illegible] receptibus [illegible]

[illegible]

sicut pro funere [illegible] [illegible]

[illegible]

[illegible] contrahat. Ratio [illegible] [illegible] [illegible] indicantibus [illegible]

Praeterea inter [illegible] [illegible] [illegible]

[illegible] quae [illegible] matrimonii [illegible]

[illegible] [illegible] quaesitum [illegible]

[illegible] tamen [illegible]

[illegible] matrimonii [illegible]

[illegible] ejusdem [illegible]

[illegible] tamen [illegible]

[illegible] tunc [illegible] non [illegible], sed [illegible]

[illegible] consentat [illegible]

[illegible] creditoru [illegible] ut 178. [illegible], ubi [illegible]
[illegible] instrumentum [illegible] commendum [illegible] privilegiati [illegible]
[illegible] Quod privilegia [illegible]
[illegible] maritimae [illegible]
[illegible] non [illegible] nonnulli [illegible] universali [illegible].

Inter credi[tores] privilegiatos ille [illegible] causa [illegible]. [illegible] ff. De [illegible] auctoritate, [illegible] ubi
[illegible] privilegia non [illegible] tempore [illegible], sed ex causa [illegible]
[illegible] licet diversitate temporis in [illegible]. Quia
omnes aequale jus habent —

Si [illegible] creditorum privilegiatorum [illegible]
[illegible] personalibus creditoribus [illegible]
[illegible], et [illegible] pro rata [illegible] media, [illegible] secundum [illegible]
[illegible] Hoc loco [illegible] sententia [illegible]
[illegible] causis [illegible] naturae [illegible]
videri, ut inter hos creditores ille praeferendus sit, qui prior est tempore. [illegible] priore
tempore [illegible] posterius [illegible] non potest
[illegible] persona [illegible] mediate [illegible] tamen [illegible]
[illegible] personae [illegible]
[illegible] servitute [illegible]
[illegible]
[illegible] hypothecariis [illegible]
[illegible] privilegio tamen [illegible]
[illegible] privilegia non [illegible]

[illegible] inter
creditores, qui nec [illegible] privilegia [illegible]
[illegible] alioquin [illegible] De separationibus, ubi [illegible]

[illegible] creditore [illegible] Bald. [illegible] e, quia hujusmodi creditores [illegible] re obligata non sunt sed tantum [illegible] contrario.

[illegible] fratres [illegible]

[illegible] hoc utroque capite in hac hypothesi reperit [illegible] non pertinet.

[illegible] consentire [illegible] solutioni non e cum illa [illegible] re, et recursu, si hoc est [illegible] emptor ante solutionem pretii non poterat vel [illegible] vendere [illegible] possit, vel sibi vendita [illegible]

Quod quidem [illegible] in [illegible] emptoris, cui [illegible] et pretio carere. Quod si emptor [illegible] re illa aut illo pre[illegible] mihi nullum ius [illegible] competere.

[illegible]

antequam pensionem [illegible] solvat. Sunt tamen [illegible] [illegible] in [illegible] [illegible] solvendae, ut habetur in [illegible] quibus caussis pignus vel hypotheca. Item l. 5. [illegible] vel communi ff. De furtis [illegible] concessit [illegible] [illegible] [illegible] tus [illegible] [illegible] de praedio antequam pensionem solvat, l. 1. [illegible] ex quibus caussis [illegible] [illegible] [illegible] [illegible] [illegible], super [illegible] [illegible] in ea [illegible] [illegible] [illegible] [illegible] pro annua pensione quam pendere debet.

[illegible] hinc argumentari contra doctrina supra [illegible], [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], [illegible] [illegible] sunt [illegible] [illegible] [illegible] non [illegible] a simili [illegible] major [illegible] ratio [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] erat [illegible] [illegible] [illegible] [illegible] [illegible] certa [illegible] partes [illegible] [illegible] [illegible] [illegible] emptori tradere non tenetur, nisi emptor [illegible] [illegible] [illegible] [illegible] [illegible] afferat.

[illegible] Doctrina aliud exceptionem [illegible] juxta statuta municipalia [illegible] [illegible] [illegible] [illegible] mercanti che [illegible] [illegible] [illegible] qualunque altra persona che vendera alcuna cosa mobile, o semovente [illegible] [illegible] [illegible] [illegible] contanti [illegible] [illegible] autorità [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] quando però la roba si troverà in mano del [illegible], ma [illegible] [illegible] [illegible] [illegible] non [illegible] [illegible] [illegible] [illegible] [illegible] medesima =

quae in hisce [illegible] marginis scripta sunt ex [illegible].

~~[illegible]~~

Quae hactenus dicta sunt [illegible]

[illegible]

[illegible]

[illegible]

[illegible] quod [illegible]

[illegible] major corporalis [illegible] quod [illegible] et sine qua [illegible]

[illegible]

[illegible]

hoc casu, quando bona fide solutionem recepit. Ergo etc.

[illegible] prorata secundum [illegible] in judicio, et in sui favore [illegible] quae in fraudem creditorum [illegible] ut unus creditor caeteris ante [illegible] creditores neglexerint exactionem [illegible] accedente sententia judicis [illegible]

Sectio V.

Quo loco, cujus impensis, et cujus periculo restituendum sit.

[illegible]

[illegible] restitutione [illegible] ex quo injuste retinebat [illegible] nisi restitutio fiat [illegible] Et hic non videat [illegible]

[illegible] tia et facere cogat.

[illegible] iniquitate damnosa [illegible] ad se [illegible] deberet [illegible] sine [illegible] se considerans, non quidem ut dominus plus inde [illegible] menti; sed quia ad [illegible] restitutionis id necessarium est [illegible]. Si tamen creditor [illegible] erat sumptus in re illa [illegible] [illegible] ut dominus ex injuria nihil detrimenti sentiat.

[illegible] ex [illegible] aureis [illegible] quod jure habebat alios [illegible] expendere, ut [illegible] debitum ad [illegible] remittere. [illegible]

[illegible] damnum [illegible] emergens [illegible] quantitas [illegible]

[illegible] charam damni respective sumpti. Sicut autem creditor ob suas impensas potest [illegible]

[illegible]

[illegible]

[illegible] debeant Secundo [illegible] damnum [illegible]

[illegible] restitutio [illegible]

[illegible] ex se damnum [illegible]

[illegible] injuria [illegible]

S vero [illegible] restituat [illegible]

[illegible] restitutione ex justitia [illegible]

[illegible]

[illegible]

[illegible] non restituat [illegible]

[illegible]

[illegible] restituere, si res injuste ablata [illegible]

[illegible]

[illegible]

[illegible]

[illegible] in manu [illegible]

res [illegible] personae debitoris [illegible] possessor malae fidei [illegible]

1202 [illegible]

[illegible] quod qui culpam sentit, sibi debet, non aliis [illegible]

[illegible]

[illegible] quasi [illegible]

re [illegible].

[illegible]

[illegible] amittit vel restituit. [illegible] creditore [illegible]

[illegible]

[illegible] imputare debet

[illegible]

[illegible] extra contractu[m]

[illegible]

[illegible] pauperibus erogandae, et

[illegible] [illegible] [illegible] i possessor [illegible] [illegible] [illegible] [illegible]

Rotio [illegible] ... [illegible]

Resp.° [illegible] possessor bonae fidei [illegible] [illegible] tenetur [illegible] bono [illegible] [illegible] [illegible] non tenetur [illegible] [illegible] [illegible] in statu pristino [illegible] [illegible] non retinuerit. Imo si possessor [illegible] in [illegible]

Resp.° [illegible] restitutione rei bona fide possessae [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] nulla intervenit culpa restituentis [illegible] [illegible] [illegible] [illegible] [illegible] restitutionis [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] aequivalenti.

Quaeres [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] sint debita ex contractu [illegible]

[illegible] [illegible] [illegible] [illegible] ex contractu [illegible] contractus [illegible] [illegible] et [illegible] [illegible] [illegible] [illegible] [illegible] contractus [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] contractus iustitiae et [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

120 [illegible] ex [illegible] contrahentis [illegible] et ex altera [illegible]

[illegible] restituendi [illegible]

[illegible]

[illegible] magis [illegible]

[illegible]

[illegible]

[illegible] valor rei [illegible]

pecuniae, ut plurimum varietur ex varietate loci

Haec [illegible] habent in contractibus [illegible]

[illegible] rei [illegible], et in mutuo [illegible] commutatione [illegible]

[illegible] alteri danda [illegible] non [illegible]

[illegible] maiori [illegible] minori [illegible] in illo [illegible] loco, [illegible]

[illegible] plus, aliquando minus solverat.

[illegible] in contractibus [illegible] et

in commodato et deposito. Hoc autem [illegible] inter depositum et commodatum, quod

depositum semper redditur [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] ab illa inde auferet, si vult; si nolit relinquat

Si vero locus a contrahentibus designatus sit [illegible] venditor soluit [illegible] in

contractu [illegible]

[illegible]

[illegible]

[illegible] conjunc[illegible] [illegible] iustitia

[illegible] in hac restitutione [illegible] generaliter [illegible] restituendum eius ex omnis cui contractus [illegible]

[illegible] contractu [illegible]

[illegible] non tamen tenetur [illegible] remittere in [illegible]

[illegible]

[illegible] non habeo [illegible] ex eo quod [illegible]

[illegible] deposito [illegible]

[illegible]

[illegible] contractus cedat in utilitatem utriusque [illegible]

[illegible] restituendum [illegible]

[illegible] ad [illegible] remittendum tenetur

[illegible] [illegible] deposito [illegible]

[illegible]

[illegible] seu [illegible] contraxit in [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] vestraeta surripit aut amittit, detrimen[illegible]

[illegible]

Sectio VI

[illegible] causa excuset aliquem, ut possit differre aut omittere restitu[illegible]

[illegible] plures super hoc argumento verba cum [illegible] afferre hunc in[illegible] [illegible]

[illegible] cuit differri, quia creditor [illegible] habere [illegible] tunc sufficiens causa [illegible] et maximum incommodum seu damnum eius qui [illegible] restituere [illegible] [illegible] damnum ex carentia ad tempus [illegible] quando [illegible] habet [illegible] [illegible]

[illegible] tamen actu debito et [illegible] non [illegible] quod [illegible] habet [illegible] restituere [illegible]

[illegible] proximum retinere [illegible] tenetur [illegible] [illegible]

[illegible]

non

non ē contra rectā rationē, injusta non ē.

[illegible] ... [illegible]

[illegible] ... quando [illegible] ... quando restitutio [illegible] ...

[illegible] ... in supremo ordine [illegible] ... fama [illegible] ...

... [illegible] ex præmissis principiis.

[illegible]

[illegible]

[illegible] iniur. Quod si credi-

[illegible] extremum [illegible] multi theologi [illegible]

[illegible]

[illegible] potest [illegible] sibi [illegible]

[illegible] Unde si [illegible] in [illegible] in extremo [illegible]

[illegible] quamvis uterque in extremo [illegible] per [illegible]

[illegible] non [illegible] propriæ vitæ servandæ causa.

[illegible]

[illegible] in gravi debitori [illegible]

[illegible] amorem [illegible]

[illegible]

colli

[illegible] differentia [illegible]
re periculum salutis animae vel debitoris, vel sua [illegible] charitate [illegible] conservare
[illegible] debito [illegible]. Requirit tamen ut [illegible]
[illegible] removendi. Hinc debitor [illegible]
[illegible] se prestituant [illegible]

[illegible] uni statim restitue [illegible]
[illegible] credito ipse rationabiliter [illegible]
[illegible] concedi [illegible]. Atqui [illegible]
[illegible] vellet ad [illegible] ergo contra equitatem et charitatem [illegible]
[illegible] statim sibi satisfieri [illegible] animae [illegible]
ne [illegible] si ad restituendum deberet vendi domus vel praedia multo minoris
[illegible] instrumenta [illegible] continue [illegible]
re [illegible] ponendi [illegible] infamiae [illegible].

[illegible] debitorem [illegible] debitorem [illegible]
rationabiliter [illegible] debitor [illegible]
[illegible] poenae [illegible]
[illegible] debere [illegible] concedere. [illegible]
[illegible] patiatur [illegible] debitis et restituendis [illegible]
[illegible] in rebus suis [illegible]
restitutione damni [illegible] in suo [illegible]
[illegible] debitor [illegible]
[illegible] separationem [illegible]
alio [illegible] restituere [illegible] charitas [illegible]
[illegible] statim [illegible] creditor [illegible].

[illegible] restitutione [illegible]
[illegible] debitor [illegible] et [illegible]
[illegible] permittit [illegible]

satisfa-

[illegible] incomodis [illegible] [illegible] debere [illegible] tenetur [illegible] suam [illegible] exercere [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] estimatur [illegible] justitia [illegible] [illegible] [illegible] [illegible] non [illegible] [illegible] [illegible] [illegible] et [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] existimant esse [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] statu [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] restitutionem posse [illegible] ex [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] et [illegible] [illegible] ex delicto [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] commutat. Subjungit tamen [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] sui status exceedant non [illegible] [illegible] [illegible] [illegible] ex contractu [illegible] ex delicto, [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] in satisfaciendo [illegible]

Dixi [illegible] [illegible] [illegible] [illegible] [illegible] si injuste [illegible] et [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] sententia tenetur statu [illegible] et [illegible] jactura restituere. [illegible] enim non [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] redire. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] nihil honoris [illegible] et [illegible] [illegible] infamati [illegible] acquirunt [illegible] honorem, et [illegible] [illegible] [illegible] [illegible] vero [illegible] credit eos [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] et [illegible] [illegible] [illegible] [illegible] et cujus [illegible] [illegible] [illegible]

Dixi praeterea [illegible] [illegible] [illegible] [illegible] periculum [illegible] [illegible] [illegible] [illegible] sententia non [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] jactura [illegible] [illegible] [illegible] statu non [illegible] [illegible] juris [illegible] extrema necessitate [illegible] [illegible] [illegible] communes. Deinde, [illegible] [illegible] [illegible] causa [illegible] [illegible] [illegible] [illegible]

[illegible]

[illegible] debiti ex contractu, isto et debiti ex delicto [illegible] ex solutione [illegible] cessat creditori lucrum [illegible] damnum emergit. [illegible] debitor ex [illegible] contractu [illegible] lucra et damna compensare [illegible] quo lucrum cessat aut damnum emergit [illegible] excepta [illegible] [illegible]. Sta injuria [illegible] et [illegible] debiti et damni [illegible] [illegible] ex delicto tenetur creditore [illegible] in eo statu in quo haberet [illegible] [illegible] non esset [illegible] dicebamus debitor [illegible] et [illegible] [illegible] non tenetur lucra et damna resarcire [illegible] creditor [illegible] patitur [illegible] quia [illegible] obligatione [illegible] debitor [illegible] causa damni [illegible] injusta damni causa [illegible] ex regula [illegible] juris [illegible] quae sic habet: [illegible] non [illegible] [illegible] si non [illegible] [illegible] [illegible] [illegible] cessante et damno emergente [illegible] non [illegible] facere

[illegible] non [illegible] [illegible] ex delicto [illegible] [illegible] restituit eo tempore [illegible] [illegible] necessitate extrema [illegible] [illegible] damno se [illegible] [illegible] detrimento [illegible] [illegible] [illegible] [illegible] restituat [illegible] restituere [illegible]

[illegible] [illegible] restituenda [illegible] non [illegible] [illegible] [illegible]

[illegible] stituere etiamsi in necessi[illegible] [illegible] quia obligatio [illegible] [illegible] [illegible] et [illegible] possibile.

[illegible] ad restituendum [illegible] [illegible] pe in ipsa necessitate [illegible] [illegible] [illegible] [illegible] extrema necessitas [illegible] [illegible] sed tantum [illegible] [illegible] obligatione [illegible].

[illegible] non tenetur reddere [illegible] [illegible] necessitati [illegible] [illegible] [illegible] Demum [illegible] [illegible] [illegible] [illegible].

[illegible] extinguat an solum suspendat [illegible] restituendi, ut fuit necessitas.

[illegible] [illegible] misereri [illegible], ut ajunt leges. Nunc

[illegible] remanent [illegible] [illegible] communiter ju-
risperiti, et Theologi. [illegible] [illegible] inueniet [illegible] [illegible] [illegible], ut petat a [illegible] [illegible] [illegible] qui
bonis [illegible] [illegible]

ho-

hoc beneficii [illegible] ei processi judicati servandum [illegible] = [illegible] dicit = [illegible] signi [illegible] acquisivit [illegible] legitimo modo [illegible] = [illegible] Decreti [illegible] signi postea acquisivit [illegible] pervenit [illegible]

[illegible] esset non [illegible] mentis [illegible] judicii [illegible] non [illegible] necessitas [illegible] subvenire [illegible] Debitores tamen juxta [illegible] beneficii consequuntur [illegible] non [illegible] si post cessionem [illegible] acquirant [illegible] speciale [illegible] et [illegible] quos alere tenet judicio pendentis

[illegible] debet, liber sit a restituendo

Respondeo negative [illegible] quia [illegible] non [illegible] justo [illegible] potest, quia [illegible] ratio nec [illegible] potest [illegible] solutio [illegible] ex justitia. Hoc enim [illegible] inter se [illegible] tamen [illegible] alienum [illegible] pro [illegible] debitori [illegible] ad [illegible] donare, [illegible] satis [illegible] dans [illegible] animo se a debito liberandi

[illegible] gratis non [illegible]

Respondeo [illegible] non [illegible] conditionem [illegible] actuali [illegible] existit

[illegible] potest

[illegible] aut sanitati.

[illegible] restitutionis [illegible] qui non [illegible] restituere [illegible] in omnibus [illegible] quod sit [illegible] Vel potest [illegible] restitutionem omittere [illegible] rei [illegible] debet. [illegible] debet [illegible] volendo [illegible] tanto [illegible] [illegible]. Deinde restit[illegible] longe [illegible] poterat [illegible] quam sit [illegible]

Hinc [illegible] nemo [illegible] bona [illegible] vel [illegible] restituat. [illegible] docent [illegible] mali- [illegible] non tenere [illegible] damnum inferat, [illegible] participat[illegible].

Potest autem bonum inferioris ordinis [illegible] [illegible] Ita si [illegible] [illegible] [illegible] [illegible] quod [illegible] in [illegible] possunt [illegible] fama [illegible] [illegible] [illegible] praesens [illegible] justo [illegible] Hoc tamen [illegible]

[illegible] aut [illegible] restitu[illegible] [illegible] propter [illegible] ex forma- [illegible] manifestando [illegible]

aut

aut aliud nisi ille [illegible] propter [illegible] [illegible]
[illegible] inde [illegible] [illegible]
[illegible] in [illegible] [illegible]
[illegible] labor [illegible] mortis [illegible] [illegible]
[illegible] ordina [illegible] magna [illegible]
[illegible]
[illegible]

[illegible] an excusetur a restituendo quia damnum in [illegible]
[illegible]
[illegible]
[illegible]
[illegible] aut inhabili reddito pro ipsa fama.

[illegible] pro vita [illegible] aut membro mutilato nihil [illegible]
[illegible] aut membrorum [illegible] illius,
[illegible] est. [illegible]
[illegible]
Exod. 21. [illegible] si rixati fuerint viri, et percusserit alter [illegible]
[illegible] non fuerit, sed jacuerit in lectulo. si surrexerit, et [illegible]
baculum suum innocens erit qui percusserit, ita tamen [illegible]
[illegible] restituat [illegible]
[illegible] innocens [illegible]
[illegible] membro [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]

[illegible] vestitate, [illegible] in aeterna [illegible] et autem [illegible] post [illegible]

[illegible] pro una vita, aut membrorum, et pro [illegible] supprimit jure naturali sibi a Deo concesso utendi vita et membris. Ergo [illegible] [illegible] inservientis [illegible] [illegible] ad illud si non posset. Carnal rest[illegible] [illegible] et alia in aliis [illegible] [illegible] ordinis superiori [illegible] illius qui [illegible] esset, ne expiate conservat [illegible], [illegible] [illegible], prior enim suis posus erat damni, et [illegible] conservare. [illegible] vero minu[illegible] [illegible] ei [illegible]. Deinde damnatione injuste [illegible] reservari debet quan[illegible] [illegible]

[illegible] conscientia [illegible] [illegible] major [illegible] quiescat, sed [illegible] quanti [illegible]

[illegible] debet reddere quiescenti, tenetur tamen [illegible]

[illegible] multo [illegible].

[illegible] Bonum ordinis superioris neque in se, neque in eo [illegible] valet

[illegible] ex [illegible], ex parte [illegible] bonum [illegible] et [illegible] semper [illegible] [illegible] ascendere, nec [illegible]

[illegible] bonum [illegible] tandem, [illegible] posset [illegible] ascendere in ratione boni superioris, quod [illegible] repugnat [illegible] [illegible] bonum [illegible] [illegible] et [illegible] [illegible] formaliter [illegible] rei debitae.

[illegible] [illegible] bona [illegible] et [illegible] non [illegible] secundum [illegible] [illegible] bona [illegible] natura [illegible] et utilia, et [illegible] bona [illegible] non [illegible] in [illegible] corporis humani aut [illegible] [illegible] in ordine [illegible] [illegible] [illegible] [illegible] bona [illegible] et [illegible] superiori [illegible] secundum [illegible] non [illegible] [illegible] non [illegible] tamen [illegible] bonis [illegible] non [illegible] [illegible] non [illegible] [illegible]

2 - 6 secundum quod cuivis humores [illegible]

Concl. 8.a Pro mutilatione, deformitate, et alio damno corporis in-tra mortem, vel pro fama, quae aliter reparari nequeat, fieri debet [illegible] restitutio in pecunia et non tantum ex consilio, ut contendunt adversarii, sed etiam ex justitia, quae imponi debet a confessario, non vendendo [illegible] famam, sed pro usu membri et famae, ut aliquo modo reparetur damnum membri et famae, ut tollantur effectus hujus damni, nempe maeror, dolor animi et alii. Pro damno vitae, et usu vitae compensari debet vel per preces, missarum sacrificia, et alia opera spiritualia pro occiso oblata, quae [illegible] partem satisfactionis, quantum [illegible], norit sufficere in compensationem vitae; aut si occisus [illegible] suffragiis juvari non posset, fieri debet compensatio in pecunia eroganda haeredibus occisi, si uxor, et liberi sint pauperes, et non possent maerorem aliter deponere.

Quaeres postremo quod demum illud sit [illegible] obligationem restitutionis prorsus extinguit.

[illegible] prorsus extingui per remissionem creditoris, si sit omnino libera, si fiat ab eo, qui condonare potest et non sit a jure impeditus, et [illegible]. Remissio enim [illegible] creditor potest, [illegible] quod habet in debitorem [illegible] ipsi debitori remittere. Hoc ipso autem [illegible], et accipiendi [illegible] in debitore obligatio [illegible] extincta minime reviviscit ex lege rara co. de remissione pignoris.

Dixi primo si sit omnino libera. [illegible] remissio a liberali [illegible] donatio sui juris. Ergo debet esse omnino libera ac procedere ex voluntate [illegible] spontanea et liberrima [illegible] nulla est remissio facta ex errore, vel ignorantia, cum ignorantia et error tollant voluntatem. Item non debet intercedere violentia, fraus, dolus, [illegible], metus, timor [illegible] tantus, propter ista impotens [illegible] et [illegible]

[illegible]

p[ro] viri, qua [illegible] importunitate solicitari; hec cu[m] o[mn]ia le[d]ant liberri-
ma[m] voluntate[m], que ad gravitat[em] [con]natione[m] requirit. Et licet [illegible] ex-
torta metu, vel [illegible] aliquo modo forte sit valida, tamen ad [illegible]-
nantis [illegible] revocabilis et donatarius tenet[ur] [illegible] et fraude[m] tollere, et [illegible]
[illegible] libertate[m] restituere, ut ratu[m] habeat, vel [illegible], quod [illegible] vel
[illegible] fecit. Quare in conscientia condonatio non valet pri[m]o si creditor
[illegible] [illegible] perveniret [illegible] culpa vel fraude debitoris bona [illegible] vel
alio transferentis [illegible] se contentu[m] [illegible] media parte; [illegible] si [illegible]
fecit creditore[m] [illegible] amicum, nisi [illegible] debiti obla[ti]
[illegible] remittat; [illegible] si cogat creditore[m] subire [illegible] molestias [illegible] solicitan-
do, [illegible] frustra, [illegible] [illegible]
[illegible]
[illegible]

[illegible] qui condonare potest [illegible]
[illegible]
ec [illegible], nec [illegible] nec uxor, que debent maritis
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible] VIII [illegible]
ex modo [illegible]
[illegible] more [illegible]

 [illegible] posset [illegible] [illegible] [illegible]
[illegible] [illegible] incertas [illegible] pro [illegible]
[illegible] notabilis [illegible] [illegible]
[illegible] [illegible] casu [illegible]
[illegible] pecunias extorserit [illegible] restituere [illegible]
[illegible] remissione ex Clementina volentes de [illegible]
[illegible] casus [illegible] [illegible] acceperit [illegible]
eas, [illegible]
Indentura [illegible] 124 [illegible]

[illegible]

De compensatione occulta

[illegible] manifestate, aut potentia,
[illegible]
[illegible] compensatione [illegible]
[illegible] accipit vel retinet ex ejus bonis quantum [illegible]
[illegible] compensationis
[illegible]
[illegible] Debent ac tamen conditiones, que requiruntur concurrere

[illegible]
[illegible]
[illegible]
[illegible]
[illegible] neque insuo casu
[illegible] sibi dicere de
[illegible]
[illegible] compensationem [illegible]
[illegible]

[illegible] non plus acceperit ex eius debitoris, quam debitum erat [illegible] S. Thomas [illegible] 66 art. 5 ad tertium. Qui, inquit, [illegible] vel suum apud alium injuste detentum, peccat [illegible] [illegible] ad restitutionem [illegible] servandus [illegible] contra [illegible] justitiae [illegible] ille [illegible] vel judicii [illegible] ordine praetermisso.

[illegible] certum et verum [illegible] debeat. [illegible] conservatio [illegible] res erat debita ex virtute distincta [illegible] caritate [illegible] ex libera voluntate [illegible] debita [illegible] debeat. nam [illegible] debent ex justitia [illegible] hoc tempore [illegible] non sunt, hoc tempore ex [illegible] injustitiam [illegible] obligat ad restitutionem, quia tunc fit injuria cum damno.

[illegible] ne alienando creditor [illegible] post mortem [illegible] non sibi [illegible] solutionem alienando damnum [illegible] restitui [illegible] reservando debere. [illegible] quia nemo [illegible] tempus [illegible] non [illegible] solutionis [illegible] debitori aliquod tempus ad debitum [illegible]

[illegible] conditio, et concursus [illegible] idemq; et sine damno tertii [illegible] ... [illegible] asserat et ... in [illegible] ... ut tertius [illegible] ... [illegible] ... [illegible] caritate illud impedire quoties possumus sine nostro gravi damno. [illegible] ... [illegible] ... [illegible] sufficerent aliis debitis [illegible] et conservatis [illegible] ... debitis secundo dicta [illegible] ...

[illegible], utrumq; absq; detrimento, et iniuria debitoris [illegible] ... [illegible] ... [illegible] servata ... [illegible] ... non [illegible] ... [illegible] ...

[illegible] ... in compensatione [illegible] vel ... [illegible] ...

Resp. id esse contra utriusq; iuris [illegible] ut constat ex Leg. ... [illegible] De compensat. et ex capite [illegible] de deposito ubi [illegible] IX [illegible] ... ad compensationi, vel [illegible] locum non fuit [illegible] contractus, qui ex bona fide

[illegible] referat. sicut compensatio committat in aliis Ecclesia [illegible] satis autem [illegible] contra [illegible] et convenire [illegible] restituendi [illegible] satis probabiliter existimant [illegible] non ad forum externum, in [illegible] probabilius [illegible] Vel certe si respiciat etiam forum conscientiae, [illegible] debet [illegible] sine magna difficultate [illegible].

Compensationes [illegible] conditionibus licita [illegible] compensatio. ita [illegible] Antonino, [illegible] Navarro [illegible] unicuique ex jure naturali [illegible] se conservare [illegible] meliori quo potest modo. [illegible] in [illegible] habitat occulte [illegible] illius [illegible] [illegible] meliori modo [illegible] occulta compensatio non [illegible] commutativam [illegible] injuria [illegible] restituendo [illegible] ex justitia [illegible] ergo rationabiliter invitus esse, ut [illegible] teneat [illegible] occulte [illegible] Non [illegible] publica [illegible] causa [illegible] compensatione [illegible].

Cautiones.

[illegible] compensationes in [illegible] [illegible] licite, [illegible] concurrant [illegible] [illegible] assumoeat [illegible] et hanc [illegible] [illegible] et moneat [illegible] [illegible] adhibeat [illegible] tenti [illegible] videat condemnationem hujus propositionis ab Innocentio XI

proui

 praecipue famuli et [illegible] domestici possunt occulte res vel sua surripere, et [illegible] [illegible] una maior [illegible] [illegible] tis [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] necesse comprehenditur [illegible] [illegible] [illegible] [illegible] [illegible] et iniustitia debent [illegible] cendio famularentur. Sicut autem [illegible] illud, quod communiter [illegible] [illegible] nec plus valuerit et [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] modo laborant

Cap. IV

De iniuriis et restitutione in particulari.

[illegible] et restitutionem [illegible] [illegible]. Haec autem bona [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] bona spiritualia, [illegible] bona corporis, [illegible] bona famae, et honoris, [illegible] bona fortunae, seu [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

naturae

[illegible] [illegible] [illegible] [illegible] acquisit nutrit auget et conservat [illegible] [illegible] [illegible]
virtutes infusae, et earundem actus. De his [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] in loco [illegible] [illegible] [illegible] [illegible] dummodo ad memoriam [illegible] [illegible] [illegible]
sunt de eo qui alium impedit a consentiendo [illegible]

Ex communi Theologorum sententia [illegible] [illegible] [illegible] [illegible] aut [illegible] [illegible]
[illegible] [illegible] [illegible] aut fraude [illegible] [illegible] ad aliquid [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] contra iustitiam, ac proinde debet ex iustitia
haec [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] ius [illegible] [illegible] [illegible] [illegible] naturali [illegible] [illegible] [illegible]
[illegible] [illegible] ius [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] de eo qui [illegible] injus
ta causa [illegible] in [illegible] [illegible] [illegible] [illegible] in fraude aliorum [illegible] injustitiae
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ex officio, et pacto tenentur
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] provenit [illegible] [illegible] Debet [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] acceptum [illegible] [illegible] [illegible] [illegible] [illegible], debet repara
re detrimenta suis alumnis, aut aliis inde secuta

Ex communi sententia qui vi, metu, fraude, vel alio modo injusto alios
ad peccandum induxit, aut a virtutis exercitio retraxit, aut contra fidem et bonos mores [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] fieri [illegible] aut [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
auctor fuit ut alter sibi noceret in bonis animae, [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] extra [illegible] [illegible] extra
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

justitia teneri, deee justitiæ cessare, et incertus in re est; [illegible]

[illegible] omni [illegible] consilio aut alio modo [illegible] fraude, aut [illegible] ad recondendum [illegible] initia ad [illegible] [illegible] sicio tenetur [illegible] [illegible] [illegible] [illegible] nec [illegible] [illegible] [illegible] [illegible] Quia ner seu mali consilii aut [illegible] aliis converterit, graviter peccat contra [illegible] [illegible] tertia [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ad [illegible] [illegible] [illegible] malis et industria contraxerunt, emendent. Ratio vero [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] aliis abstrahat Deum ex justitia retractis ad eandem reducere

[illegible] I. Qui aliquem avocat a religionis ingressu vel professione [illegible] [illegible] [illegible] conficit [illegible] [illegible] [illegible] [illegible] [illegible] spiritus Dei extinguit. [illegible] [illegible] [illegible] [illegible] viginti vel [illegible] mulieri [illegible]

[illegible] pueri sine ista caeremonia [illegible]

[illegible] ipso [illegible] ex religionis [illegible] quod ingredi desiderant [illegible] si parentes [illegible] [illegible] licet [illegible] re, et probare.

Cap. II. Quinto [illegible] [illegible] [illegible] [illegible] libertatis [illegible] [illegible] [illegible]

[illegible] non tenere aut [illegible] [illegible]

[illegible]

Articulus I

De injuriis in bonis [illegible] seu [illegible] proximi [illegible] et [illegible] stuprum, et adulterium, et de congrua [illegible] separatione

[illegible] et alterius homicidium alteri- [illegible] patrat vel [illegible] offensione [illegible]

[illegible] ut patet ex 5to precepto Decalogi non [illegible]

[illegible] praeterius [illegible]

[illegible] mini in vita nostra [illegible] sibi in [illegible]

[illegible]

De persona occisi an scilicet vir [illegible] [illegible] an [illegible] [illegible] [illegible] [illegible] etc. [illegible] tunc [illegible] etiam [illegible] [illegible] [illegible] [illegible] [illegible] aut [illegible] debita, an sit sacerdos, monachus, clericus, quia tunc etiam sacrilegium patratur. interrogare debet de qualitate occisi, an esset [illegible] [illegible], qui uxorem et liberos suis [illegible] alebat, an filium familias [illegible] [illegible] pro [illegible] necessarium, an [illegible] [illegible] [illegible] facta [illegible] [illegible] Pharmacopola etc. [illegible] examen [illegible] debet ut [illegible] [illegible] obligatio compensandi, ut infra patefiat.

[illegible] praecepto non occides, et virtuti justitiae non solum adversatur [illegible] [illegible] etiam mutilatio [illegible] [illegible] [illegible] in corpore [illegible] [illegible] [illegible] [illegible] causae et [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] praecepta [illegible] ex ignorantia, negligentia, avaritia, etc. sunt in causa cur morbus [illegible] [illegible] [illegible] [illegible] [illegible] ingravescat, vel diutius protrahatur. [illegible]

[illegible] Pharmacopolae qui in confessione [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

Sectio I.

[illegible]

[illegible] modo est alieni [illegible] [illegible] [illegible] [illegible] [illegible] intentione [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] S. Augustinus [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] quis [illegible] [illegible] [illegible] [illegible] est [illegible] [illegible] [illegible] unde [illegible] intentionem [illegible] [illegible] [illegible] et si nihil [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible]

P. 30 Sine auctoritate [illegible] nunquam licita et recta est privatio [illegible] prius [illegible] seu necessariò [illegible] [illegible] [illegible] [illegible]

[illegible] una auctoritate [illegible] [illegible] [illegible] contra illud [illegible] [illegible] et mensura [illegible] [illegible] [illegible] quaest. 5 [illegible] homicidae [illegible]

[illegible] vel alterius sine qua conserva[illegible] alterum corrumpere et exercere actus [illegible] [illegible] [illegible] contra jus quod habet [illegible] Hinc D. Thomas [illegible]

[illegible] — [illegible] pars [illegible] aute [illegible]
comunitati [illegible] in hoc [illegible] iniuriam comunitati [illegible] —
Licet vero [illegible] sit [illegible] ver [illegible] tamen [illegible]
[illegible] contra iustitiam [illegible] quae non est minoris momenti [illegible]

Ex iis necessario consequitur [illegible] teneri ad conservandam
[illegible]. Sicut enim Deus [illegible]
[illegible] depositarius et custos vitae ac membrorum [illegible] ita ut mem-
bra conservet. Unde moraliter censetur [illegible] qui non [illegible]
[illegible] conservationi.

Consequitur [illegible] nemini licere se gladio transfodere, ne ignominiose
suspendatur, ne [illegible] morti [illegible]
in mare [illegible] ne [illegible] nomen
[illegible] matri permittere [illegible]
[illegible] incendio ac [illegible]
[illegible] videntur
[illegible]
[illegible] juxta [illegible]
[illegible] corpus [illegible] non [illegible]
[illegible]
[illegible]
[illegible]
cidamus in adulterium —

Conclusio II.

[illegible]
[illegible]

[illegible] quamvis Deus [illegible] prohibuerit, ne ex intentione [illegible]
[illegible] legitima causa [illegible]

causa

2 [illegible] ... an negligas nulliti [illegible] tribuit re vita mea [illegible] operat [illegible] proposita ut [illegible] semper [illegible] servare quantu[m] [illegible]. [illegible] licet exerceret, ut a causa [illegible] habere [illegible] omittere, a quo propter intentione[m] [illegible] propria[m] [illegible] sua etiam [illegible] sic [illegible] permisit se, [illegible] sic et plures Martyres e carcere non exierunt [illegible] possent [illegible]

[illegible] esse [illegible] et debere [illegible] tempore pestis [illegible] per avius sacramenta administrare [illegible] etiam alii [illegible] contagio- se [illegible] periculi [illegible] ad exhibendu[m] caritatis officium

Resolves [illegible] peccare, quae corpus attenuant [illegible] [illegible] et [illegible] vita [illegible] co [illegible] [illegible] prius ad [illegible] [illegible] carnes meae in servitute [illegible] et quod sentiat [illegible] [illegible] memoria [illegible]. [illegible] quod sibi poenitentia et [illegible] sensus [illegible] quia [illegible] solebant qui [illegible] sequuntur. [illegible] tamen [illegible] intentio [illegible] quae nostra [illegible] [illegible] corporis non [illegible] ne [illegible] auferi [illegible] [illegible] aut [illegible] tempore te [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] corpus [illegible] [illegible] [illegible] abstinentias [illegible] [illegible] [illegible] [illegible] [illegible] prudentia [illegible] [illegible] [illegible] nimeas [illegible] [illegible] [illegible]

[illegible] [illegible] eadem, resolves actus virtutis heroicae [illegible]

ayu

[illegible] in [illegible] in æternam damnationem conjiciat, nam ut [illegible] noster [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] membra, tamen [illegible] [illegible] salutem consulere [illegible] [illegible] [illegible] [illegible] valde [illegible] [illegible] [illegible] [illegible] esse debet.

Resolves [illegible] habendum non esse ut homicidam [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] et mortaliter [illegible] [illegible] [illegible] [illegible] profundi [illegible] [illegible] patrimonii sui [illegible] [illegible] [illegible] acerbissimas [illegible] [illegible] [illegible] [illegible] [illegible] Ita [illegible] non esse interficere sed solum ad mortem [illegible] [illegible] permittere. Licet autem ille absolute [illegible] non [illegible] [illegible] [illegible] experientia [illegible] [illegible] [illegible] magis [illegible] [illegible] [illegible] medicamento [illegible] prudentis medici [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] medicamenta et [illegible] prudens non [illegible] [illegible] [illegible] [illegible]

Conclusio III

[illegible] [illegible] [illegible] [illegible] membri amputationem permittere nisi id exigat conservatio totius.

[illegible] prima pars. Solus Deus [illegible] [illegible] corporis et membrorum [illegible] [illegible] [illegible] [illegible] concessus non [illegible] [illegible] membro [illegible] [illegible] [illegible] totius corporis [illegible] nisi id exigat conservatio [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] membra [illegible] [illegible] gravi peccato.

[illegible] [illegible] [illegible] [illegible] partes [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] nisi [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

nu

non [illegible] [illegible] [illegible] [illegible] [illegible] servet incolumen. Ex quibus [illegible]

[illegible] solves primo, si cancer membrum occupaverit [illegible] vel aspis [illegible] [illegible] [illegible] [illegible] medici [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] non [illegible] [illegible] [illegible] [illegible] [illegible] quamvis invenites [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] sit ut securius [illegible] [illegible] [illegible] [illegible] [illegible] id ecclesia improva[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] quia et sui homicida. Et capite 6. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] membra [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] sed quod est Deo injuriosum, et blasphemum. Hinc patet [illegible] [illegible] [illegible] [illegible] [illegible] aut suasione in obsequium Ecclesiae.

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

Resp. haec duo loca in litterali sensu accipienda non esse. [illegible] [illegible] in priores locum ait, ac se castrasse non per recisionem membrorum [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] testimonii [illegible] [illegible]

[illegible] nobis [illegible] est [illegible] causa peccati. [illegible] [illegible] intelligit [illegible] [illegible] [illegible] [illegible] [illegible] comitatum. [illegible] [illegible] comitentis et invitamentis.

Sectio II

De servitutine et comitatu publica [illegible] facto.

Inquires primo cuinam liceat revelare alicuius [illegible] [illegible] commissa est.

Resp. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] in delinquente, et [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] liberatione [illegible] [illegible] infestur corporis [illegible] [illegible] [illegible] [illegible] [illegible] alicui non licet, nisi [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] aliquem, nisi sit ejus iurisdictioni subjectus et [illegible] [illegible] [illegible] non licet nisi habenti [illegible] [illegible] super illum [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] et [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] et [illegible] causa correctionis et [illegible] [illegible] [illegible] [illegible] magistro, et de tutore, qui [illegible] [illegible] [illegible]

[illegible]

 [illegible] perdere, bannitos, et rejectos vivere non sinere —

In promptu [illegible] memoria [illegible] [illegible] quanto necessarium [illegible] securitatis publicae bonae societatis [illegible] [illegible] potestas quae [illegible] [illegible] [illegible] tollere e medio tollere [illegible] [illegible] Ita [illegible] memoria [illegible] [illegible] licet delinquentes [illegible]

Pertinet ad publicam potestatem quae est in Principe [illegible]

[illegible] non licere privata auctoritate peccatores occidere [illegible]

[illegible] [illegible] [illegible] [illegible] sess. 25. hunc articulum [illegible] — quilibet [illegible] potest et debet licite [illegible] [illegible] consuetudine [illegible] [illegible] ex [illegible] manifesta [illegible] — Et certe [illegible] et injustis exactionibus, qui vendit officia [illegible] + leges publicas [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] superioribus, licet [illegible] et ad [illegible] [illegible] [illegible] armis invadit et occupat [illegible] [illegible]

[illegible]
Ad hoc tamen plura requiruntur, et praecipue ut certo constet [illegible] oppressore [illegible] et ad eum interimendum adsit consensus [illegible] publica auctoritate, non ex mente cuiuslibet privati sed a publica auctori[illegible]

Neque proderam hanc [illegible] VII [illegible] adulterii [illegible] nos Horontii S. Augustinus lib. 2 de adulterinis coniugiis. Cum [illegible] cet homini christiano adulteram [illegible] occidere [illegible] licere. [illegible] S. [illegible] nos omnino fuisse neque [illegible] parenti [illegible] adulterum [illegible] innui [illegible] contra [illegible] ictu rationis aeterna salus eorum, qui sic occiduntur, et denegatur spatium poenitentiae. [illegible] possint [illegible] accusari [illegible] Adipso [illegible] zone [illegible] data occasio occidendi [illegible] vel [illegible] voluisse capere.

[illegible] pater et maritus possunt nec debere filiam [illegible] [illegible] si in [illegible] auctoritate [illegible] et lex eos [illegible] habet [illegible] Patri datur ius occidendi adulteram [illegible] sua in [illegible] habet. (Le. vero 2.) ius occidendi Patri concedit dominus, licet iam [illegible] habitet [illegible] in domo generi (et L. 23.) voluit lex [illegible] Patri competere si in ipsa [illegible] [illegible]

[illegible] communiter solet, leges ita placere pro moram tollerantia [illegible] amicitias huiusmodi non punire, quia [illegible]

res

1-3 [illegible] ... ac maximo dolore [illegible] ...

[illegible] ipsa [illegible] ...

qui in [illegible] cum uxore [illegible] ... in [illegible]

[illegible] excommunicationis [illegible]

[illegible] accepta, leges illae [illegible] justae sunt. sed si [illegible] hujusmodi [illegible]

[illegible] approbare sunt injustae et improbatae per canones. [illegible]

[illegible]

uxorem perimere, una [illegible] respondit — [illegible]

[illegible] nisi [illegible]

[illegible] —.

Inquires utrum liceat auctoritate publica directe [illegible]

[illegible]:

[illegible]

[illegible] expresse prohibit [illegible]

[illegible] sunt [illegible] homicidae, qui [illegible] in [illegible] justo [illegible]

[illegible] III [illegible]

[illegible] non [illegible]
[illegible]

[illegible] in judiciis probationes [illegible]
[illegible]

Propterea certum est judice [illegible] molliri, ut desistant accusatores [illegible] et testes [illegible] testimonio. [illegible] debet [illegible] diligenter [illegible] publica et privata testes [illegible] ac separatim examinare [illegible] proficiant debet [illegible] re, et quod ipsum [illegible] [illegible] negaverit [illegible] [illegible] mente contentiunt licere tunc judici innocentes capite [illegible]

Conclusio

Etiamsi deberet judex officio [illegible] etiamsi [illegible] [illegible] et etiamsi hoc modo nihil [illegible] tamen non [illegible] [illegible] esse innocentes. Ita fere omnes [illegible], et alii.

[illegible] et [illegible] Ergo nullo [illegible] et [illegible] non occidas [illegible] [illegible] innocentes, a veritate deviat ob sententia [illegible] [illegible] [illegible] [illegible] judices, cum [illegible] documenta et testimonia esse falsa non possunt accusatum [illegible] punire, adeoque nec morti damnare

[illegible]
novit

[illegible]

[illegible] quae morte non minus requirit verum crimen in reo, quod vera [illegible]

[illegible]

[illegible] pro [illegible] ex officio et potestate [illegible]

[illegible]

[illegible] sententia [illegible] non [illegible] ad [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] privatus [illegible] [illegible] [illegible]

Contra [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] veritas [illegible] [illegible] non peccato [illegible] [illegible] [illegible] non occidit innocentem sed illi [illegible] [illegible] [illegible] non pertinet ad [illegible] [illegible] [illegible] [illegible] in iudicando [illegible] [illegible] [illegible] [illegible] publica

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] privatus [illegible] innocentia [illegible] [illegible] tamen [illegible] [illegible] in communi [illegible] in particulari in [illegible] vel Divinas [illegible] [illegible] [illegible] debet [illegible] [illegible] [illegible] [illegible] debet [illegible] in iudicando magis [illegible] id quod ipse novit tanquam privata persona [illegible] [illegible] vel communi [illegible] [illegible] [illegible] vel communis [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] communi sententia in causis [illegible] [illegible] allegata et probata sicut et in causis criminalibus [illegible] [illegible] iudex iudicat ut persona [illegible] [illegible]

Resp. negando consequentiam, quia inter causas civiles et criminales [illegible] discrimen [illegible] [illegible] debet [illegible] [illegible] [illegible] [illegible]

1242 [illegible] transferre [illegible]

[illegible] in causis [illegible]

[illegible] contra [illegible]

[illegible]

[illegible]

[illegible] judices contra [illegible] praetextu [illegible] possent [illegible]

[illegible] recusare quoties vellent.

Debent tamen [illegible] causa [illegible] quando [illegible]

[illegible] industria [illegible]

[illegible]

[illegible]

[illegible]

Sectio. III.

An liceat [illegible]

[illegible] honoris, productis, vitae

[illegible]

[illegible] possessione [illegible]

X I [illegible]

[illegible] solum [illegible]

[illegible]

[illegible]

impedientes ne vel haereditas [illegible] tollit defendere, sicut [illegible]

[illegible]

[illegible]

[illegible]

[illegible] occidere [illegible]

[illegible]

Oncit

Conclusio 1.

[illegible] aut per [illegible] modis exponere [illegible] momenti et [illegible] non [illegible] tamen [illegible] sententia [illegible] habet hoc tempore [illegible].

[illegible] auctoritate [illegible] non [illegible] imitarunt [illegible] expresse [illegible] et [illegible] Augustinus et [illegible] venisset [illegible] per [illegible] expositio [illegible] mortuo [illegible] accepit [illegible] terrae [illegible].

[illegible] auctoritatis [illegible] non [illegible] non ulterior [illegible].

[illegible] auctoritate [illegible] S. Augustinus [illegible] libro [illegible] providentiae [illegible] omni operatione humana [illegible] et S. Gregorius [illegible]

244 [illegible] = non [illegible] ita se esse [illegible]

[illegible] Libri [illegible] defendere. Fatemur [illegible]

[illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] Denique [illegible]

[illegible]

[illegible]

[illegible] Samaritanis.

[illegible]

ad [illegible] [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

rabis, [illegible]

[illegible]

[illegible] malitia vivendis. Adde [illegible]

[illegible] haeres in suis [illegible] et [illegible] et [illegible] ab illis [illegible]

[illegible] non [illegible].

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] et [illegible] defenderet [illegible] adversariis [illegible]

nae

hac auctoritate [illegible] [illegible] commutativa [illegible] ad sensum [illegible] parvulae [illegible].

[illegible] Qui [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] pro de restitutione spoliatorum Innocentius III approbat quod Episcopus [illegible] [illegible] vi repellendo exercuit suae possessionis [illegible] [illegible]. [illegible] de sententia excommunicationis [illegible] [illegible] [illegible] sese [illegible] [illegible] [illegible] [illegible] [illegible] si praesertim [illegible] cum omnis suis mundanis injuriose [illegible], vel ea [illegible]ter occuparet, praesumpserit) contra illius violentia injuriama [illegible].

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ea [illegible] qua [illegible] ratio [illegible] [illegible] [illegible] haec autem moderatio in nostra hypothesi non servatur, iniquum enim est contra [illegible] ordine [illegible] [illegible] [illegible] bonum superioris ordinis et [illegible] irreparabile ad bonum ordinis inferioris et [illegible] conservandum. Deinde [illegible] [illegible] [illegible] ad conservanda vita proxime [illegible] [illegible] [illegible] ad defensione [illegible] honore

Conclusio II

[illegible] [illegible] aut [illegible] [illegible] incasorem occidere illicitum [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] agant

Prob. primo auctoritate Matt. [illegible] q. Dicit: ego autem dico vobis [illegible] [illegible] [illegible] [illegible] [illegible] ego autem dico vobis: diligite inimicos vestros, benefacite his, qui oderunt vos et orate pro persequentibus et calumniantibus vos [illegible] [illegible] [illegible] 6. benedicite maledicentibus vobis, et orate [illegible] [illegible] [illegible] [illegible] XI damnata est propositio [illegible] [illegible] [illegible] qui nobis calumnias inferre si aliter haec ignominia vitari nequit. [illegible] [illegible] [illegible] [illegible] vel [illegible] [illegible]

poss

post [illegible] [illegible] vel [illegible] [illegible] — [illegible] Alexander VII proscripsit [illegible] [illegible] [illegible] [illegible] calumniatorem [illegible] [illegible] [illegible] [illegible] religiosus [illegible] mirabile occidere, quando [illegible] [illegible] [illegible] offerendi non separatis

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] sunt [illegible] pro se reparatione [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ut [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] et [illegible] [illegible] alterius. [illegible] [illegible] verba [illegible] [illegible] [illegible] [illegible] cap. 17. nec sic pro nugno haberi [illegible] [illegible] [illegible] [illegible] [illegible] deris [illegible]. Deinde opposita sententia [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] violentiae, [illegible], et [illegible] [illegible] [illegible] quod licet occidere ad [illegible] [illegible] [illegible] et [illegible] [illegible] ad defendendum [illegible] vel [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] vel [illegible], sed solum [illegible] quod occisor [illegible] [illegible] nec [illegible] vel [illegible] [illegible] [illegible] [illegible] vel [illegible] [illegible] [illegible] [illegible] et tunc [illegible] [illegible] [illegible] [illegible] ad [illegible] [illegible] [illegible] [illegible] et [illegible] ad [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], si [illegible] proximi id [illegible]. Ex [illegible]

[illegible] primo juxta communem sententiam, ne [illegible] [illegible] [illegible] [illegible] aut alapa percusso licere percutientem [illegible] [illegible] [illegible] [illegible] [illegible] et in [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

non auctive defendere [illegible] nisi in actuali oppressione et [illegible] [illegible] reponit. Aliud foret si aggressor [illegible] [illegible] tunc [illegible] [illegible] liceret [illegible] [illegible]

Resolves ideo non licere [illegible] [illegible] [illegible] [illegible] prisam [illegible] licet.

[illegible] praestantius [illegible] aut [illegible] quid melius [illegible] [illegible] conversationi [illegible] etiam ad [illegible] vel ad reparandam [illegible].

[illegible] honore non est qui praestantius vita nisi [illegible] et [illegible] [illegible] bonum longe inferius [illegible] aliena existimatione [illegible] [illegible] [illegible] mera vanitas [illegible] licere etiam [illegible] bona [illegible] [illegible] ad [illegible] [illegible] honoris [illegible] [illegible] [illegible] apud [illegible] honestos [illegible] honoris [illegible] [illegible], [illegible] offensa [illegible] honorem [illegible] [illegible] nihil. [illegible] apud [illegible] nomen habere [illegible] [illegible] ab [illegible] honestis [illegible] ac proinde contemnenda [illegible] non servant [illegible] maxime [illegible] praestantissimus [illegible] [illegible], at [illegible] Christi et sanctorum [illegible]

[illegible] [illegible] [illegible] non [illegible] [illegible] infamiae [illegible], non [illegible] [illegible] [illegible] infamiae, imo [illegible] [illegible]. Sed...

Deinde aut merito, vel ab eis [illegible] et iuris habeat, vel non. Si non,
nihil nocet aliorum [illegible] et contumelia [illegible] [illegible] [illegible]
tate certi [illegible], eius plus ædificationi alterius et non ulciscendo iniuriam [illegible]
æterna. [illegible] si vero contumelia, eam, aut nihil pariter nocebit. Præterea
assumptis testibus innocentiam [illegible] et moderate defendere in iudicio. Deinde si
quandoque eveniat, ut non essent qui honorem [illegible] honorem mortis [illegible]
[illegible] habet ejus jacturam [illegible] [illegible] cum Deus [illegible] poena
æterna [illegible] vero iniuriam remittentibus [illegible] [illegible]. Hoc videlicet
[illegible] debemus esse atque ignominiam sed [illegible] [illegible] [illegible]
[illegible] contra legem [illegible] conscientiæ [illegible].

Ex his [illegible] [illegible] [illegible] responsionem illis, qui [illegible] offensa [illegible] quia existimant duellum esse necessarium ad [illegible]
tanda ignominia et propulsando nota [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] nobili non esse [illegible] duellum [illegible]
[illegible] nobilis [illegible] contemptu [illegible] et habeatur [illegible] [illegible] familiæ
[illegible]. Respondemus [illegible] [illegible] ignominiam et nomini [illegible]
[illegible] [illegible] [illegible] opinionibus, sed recta
ratione [illegible] sapientum [illegible] [illegible] [illegible] [illegible]
[illegible] lege [illegible] [illegible] [illegible]. [illegible] Deus et [illegible]
[illegible], ac probos, qui summa [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] patientia ac mansuetudine [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] Deum [illegible] [illegible] [illegible]
[illegible] [illegible] divinis et humanis legibus [illegible] [illegible] [illegible]
[illegible] [illegible] amittat atque ignominias æternas ac summa [illegible]
[illegible] [illegible] [illegible] æterna et æternum [illegible] [illegible] [illegible]

[illegible] nec materia non [illegible] ac [illegible] expedienda.

Quaeres ergo primo, quid sit duellum et multiplex.

R.° primo, duellum est certamen [illegible] [illegible] ex [illegible] determinato numero in certo loco et tempore designato, ex mutua conventione susceptum cum vitae vel mutilationis periculo. Dicitur primo inter duos, vel pauciores determinato numero: si enim plures inter se pugnent nullo ordine, ac numero praestituto, non est proprie duellum, sed rixa; est vero duellum quando singuli contra singulos decertant, ut fit, dum principales duellantes assumptis sociis seu ut vocant patrinis et secundantibus ita certamen ordinant, ut principalis contra principalem, socius contra socium praelietur.

Dicitur vero in certo loco et tempore designato: id enim requirunt SS. Pontifices in suis constitutionibus, ut [illegible] Gregorio XIII, [illegible] tempore et loco con[illegible]. Non censent autem locum et tempus designasse, qui rixantes in loco angusto, sacro, [illegible] etc. [illegible] [illegible] [illegible] [illegible] deprehendunt [illegible] [illegible] [illegible] [illegible] [illegible] aut [illegible] nulla [illegible] [illegible] [illegible] [illegible] ad locum aliquem [illegible] et [illegible] [illegible] [illegible] [illegible] [illegible] uno contextu, et subito irae calore procedunt, non [illegible] [illegible] una moraliter actio [illegible] esset, si [illegible], [illegible] [illegible] [illegible] [illegible]: [illegible] [illegible] locum, et ibi congrediamur. Tunc enim designatio loci et temporis [illegible] [illegible] [illegible] ac [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] tempore. [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] aut nunc arma te [illegible] [illegible] [illegible] [illegible] [illegible] materia est, [illegible] [illegible] tempus determinari.

Denum

[illegible] ex [illegible] Gregorii XIII ex conditio [illegible] [illegible] to [illegible] alii [illegible] [illegible] Reinder[illegible] [illegible] ex [illegible] [illegible] vel soli [illegible] et [illegible] Hec omnia [illegible] [illegible] sunt non tam pro [illegible] criminis, sed ut [illegible] [illegible] [illegible] curant.

Dicitur 3tio certamen ex [illegible] seu [illegible] ex [illegible] ut expresse ait Gregorius, et [illegible] ex composito [illegible] arma ex [illegible] sumant et [illegible] inimici sibi [illegible] [illegible] et [illegible] [illegible] erant.

Dicitur [illegible] [illegible] [illegible] [illegible] [illegible] arma [illegible] [illegible] que sunt [illegible] vel [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] mortis aut mutilationis [illegible] duellanti[illegible] [illegible] mors [illegible]

[illegible] [illegible] in simplex et solemne. Solemne [illegible] [illegible] [illegible] electis [illegible] [illegible] [illegible] [illegible] testium [illegible] seu [illegible] [illegible] [illegible] simplex [illegible] non servat [illegible] et solemnitates. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

Duellum autem [illegible] [illegible] causa [illegible] [illegible] [illegible] [illegible] bellum [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] non minus [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] Principi ac captore singulare certamen [illegible] ab [illegible] ut ex [illegible] unus contra unum [illegible] [illegible] [illegible] [illegible]

[illegible] animas [illegible] autem erabent [illegible] et similes in [illegible] sacramento [illegible] omnes. [illegible] causa [illegible] [illegible] [illegible] Goliath Philis[illegible] teo Gigante pro [illegible]

Illicita tamen esset pugna inter duos, vel paucos milites, [illegible] Princeps permitteret ad sanandas [illegible] aut privatae vindictae cupidinem, Princeps enim non habet [illegible] [illegible] in ordine ad commune [illegible] [illegible] inde non potest eas exponere [illegible] nec ullo modo [illegible] ad publica [illegible]. [illegible] etiam cum consensu Principum est illicitum, et [illegible] [illegible] ad [illegible] crimen vel innocentiam [illegible] veritatis manifestatio ex [illegible] e tentare Deum cum pro assertione veritatis et innocentiae non promiserit victoriam et non raro innocentem [illegible] ergo medium [illegible] et [illegible] assumi non potest ad [illegible] causae [illegible].

Quaeres [illegible] an duellum [illegible] [illegible] semper [illegible] bivece malum, et culpa lethalis

[illegible] illud [illegible] [illegible] licet aut [illegible] acceptare [illegible] ex [illegible] conciliis et decretis [illegible] ex [illegible] [illegible] praeceptum non [illegible] non [illegible] privatam [illegible] privata [illegible] occasione [illegible] [illegible] duellantes ad minimum [illegible] poenam [illegible] [illegible] conciliis [illegible] Tridentinum [illegible] 25. de reformatione cap. 19 [illegible] in [illegible] [illegible] invenit [illegible] detestabilis duelli [illegible] Diabolo introductus, ut cruenta [illegible] animarum etiam [illegible] [illegible] orbe [illegible] [illegible] duella severissime [illegible] [illegible] Pius IV [illegible] Gregorius XIII constitutione ad tollendas, Clemens VIII constitutione [illegible]

[illegible] autem quidam licitam asseruerant acceptationem duelli, [illegible] [illegible] duelli [illegible] honore [illegible] auctoritate [illegible] Alexandri VII [illegible] in decreto [illegible]

[illegible] 165 [illegible] sub n° [illegible] praescripsit: si [illegible] ad duellum
vocatus, potest illud [illegible] [illegible] [illegible] apud [illegible] [illegible]. [illegible] [illegible]
tione Detestabilem An. 1752 [illegible] [illegible] [illegible] Benedictus XIV hos [illegible], [illegible]
[illegible] de Duello damnavit — [illegible] [illegible] [illegible] [illegible] offert, vel accep-
tat [illegible] tanquam [illegible]; [illegible] et ad [illegible] [illegible] [illegible] [illegible]
[illegible], [illegible] officio [illegible] [illegible] [illegible] [illegible] sed [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] et [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] etiam honoris tuendi [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], provocatus [illegible]
[illegible] [illegible] [illegible] non [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]. [illegible] [illegible]
[illegible] [illegible] [illegible] etiam poena [illegible] [illegible] contra [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] naturali [illegible] et [illegible] duellum [illegible] [illegible] honore [illegible],
quando [illegible] [illegible] [illegible], [illegible] [illegible] [illegible] [illegible] [illegible]
naturali [illegible] [illegible] etiam potest [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible], vel [illegible] majestatis [illegible] [illegible] [illegible] —.

Demonstratur [illegible] [illegible] [illegible] qui ad duellum, [illegible] [illegible] [illegible] [illegible]
[illegible] Deo [illegible] [illegible] proprio [illegible] [illegible] [illegible] [illegible] [illegible] Deus [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible]. 2do infert injuriam provocato, [illegible] [illegible] [illegible] jure, quod habet vitae, et mem-
bris utendi. 3tio infert injuriam Reipublicae, [illegible] in [illegible] caussa sumit [illegible]
[illegible], et contra [illegible] [illegible] [illegible] [illegible] [illegible] auctoritate [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] magistratus [illegible] [illegible] [illegible] [illegible] et [illegible] [illegible]
[illegible] [illegible] [illegible] in crimen [illegible] [illegible] [illegible] [illegible] [illegible] tamen [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] Dei [illegible] [illegible] [illegible] [illegible]
[illegible], cujus [illegible] [illegible] [illegible] confirmavit [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] contra [illegible] [illegible], et [illegible] [illegible] [illegible] [illegible]
[illegible]

cima seu casidendi animi externati.

Ex his, quae diximus, liquet non licere provocato loca convicta ad locum examinis sese conferre, etsi se non conferret animo duellandi, sed se deffendendi contra provocantem, si a provocante impetatur. Quamvis enim in destinatum comminus descendere secundum se sit actus indifferens, in his tamen circumstantiis minime indifferens est hic, et nunc, esse exponere directe periculo vitam alienam destruendi vel amittendi propriam, et alteri praebere occasionem proximam aggrediendi. Quod si provocans minetur mortem hic, et nunc inferendam, nisi acceptet duellum, etiam non incauti provocati debet illud renuere. Neque acceptatio duelli tunc reputanda est deffensio vitae; deffensio enim non habet locum nisi in actuali aggressione, dum si vis illata repelli, sed indeterminate in casu futuri tutelae.

Quaeres 3tio, quaenam sint poenae duelli.

Resp. Concilium Tridentinum loco supra cit. post verba relata sic prosequitur = Imperator, Reges, Duces, Principes, Marchiones, Comites, et quocumque alio nomine Domini temporales, qui locum ad monomachiam in terris suis inter christianos concesserint, eo ipso sint excomunicati, ac jurisdictione, et dominio civitatis, castri, aut loci, in quo, vel apud quem duellum fieri permiserint, quod ab ecclesia obtinent, privati intelligantur, et si feudalia sint, directis Dominis statim acquirantur. Qui vero pugnam commiserint et qui eorum patrini vocantur, excomunicationis, ac omnium bonorum suorum proscriptionis, ac perpetuae infamiae poenam incurrant, et ut homicidae juxta sacros canones puniri debeant, et si in ipso conflictu decesserint, perpetuo careant ecclesiastica sepultura. Illi etiam qui consilium in causa duelli tam in jure, quam facto dederint, aut alia quacumque ratione ad id quempiam suaserint, necnon spectatores excomunicationis, ac perpetuae maledictionis vinculo teneantur =

Hoc incentivum mali decretis subsequentibus summi Pont. ampliarunt, Ro. Pius IV in bulla ea quae alias poenas adjecit, contra eos

257 [illegible] poenas privationis [illegible] et inhabilitatis ac ea [illegible] con-
tra [illegible] vero poenas criminis lesae maiestatis, et alias [illegible], [illegible] extendit
[illegible]
[illegible] XIII [illegible]
[illegible] Decreti contentis [illegible], [illegible]
[illegible] etiamsi [illegible]
[illegible] nec [illegible] liberae [illegible]
[illegible] voluit [illegible] privata duella permit-
[illegible] auxilium vel consilium [illegible]
[illegible] scienter [illegible]
[illegible] Decretum [illegible]
[illegible] VIII [illegible] excommunicationis [illegible]
Apostolicae [illegible] extendit ad quoscumque consiliarios,
[illegible] fautores [illegible]
[illegible]
[illegible]
[illegible] Tandem [illegible]
[illegible] duella [illegible] tolerantes [illegible]
[illegible] absolutionem summo Pontifici reservavit.

Eduardus I. [illegible]
[illegible]
et de incestis ut [illegible]
[illegible]
[illegible]
[illegible]
[illegible] ob

ullo animo, neque ideo augusta, ut huiusmodi [illegible] bilis sit, ne ipsi ipsa poena debeat.

Annotatio II Quod attinet ad sextu[m] Inventarii [illegible] careat Ecclesiastica sepultura, et certa [illegible] semper [illegible] Ecclesiastica privatio ex volumus advertendum [illegible] prius, nam ex poenas latae sententiae ipso iure [illegible] sit [illegible] ecclesiastico occubuisse in loco sacro sepeliri non posse, etiamsi sententia criminis declaratoria nulla praecesserit [illegible] humo sacra privari in duello [illegible], etiam si contritionis edita poenitentiae signa dedisse, ut patet ex rituali Romano edito iussu Pauli V. titulo de exequiis, cuius verba sunt: negatur sepultura ecclesiastica [illegible] in duello etiamsi ante obitum dederint signa poenitentiae. [illegible] tamen, si [illegible] loco translatus decedat poenitens, certa enim [illegible] si in tali [illegible] occubuerit, ut sint poenaria, non sunt [illegible] [illegible] certa, [illegible] non [illegible] [illegible] Canonistae monent Parochum, ut rem ad Episcopum, aut Vicarium eius referat, quia inquit Barbosa, [illegible] soli [illegible] criminibus [illegible] sunt.

Sopra preterea leges [illegible], seu [illegible] cera [illegible] poenas in [illegible] decemviri An. 1541. Die 29. mensis Aprilis = Il [illegible] delle cartelli, che si [illegible] da alcuni contra altri [illegible] a combattere ~~[illegible]~~ con arme si in questa Città di Venezia come in tutte le altre città nostre del tutto sia proibito sotto pena a quelli in nome delli quali si troveranno posti con cartelli o altramente in questa, o in alcun'altra città nostra come di [illegible] d'esser banditi per anni dieci de essa città nostra di Venezia e di tutte le altre terre [illegible] degli nostri (sed altro essendo nostri [illegible]) di esser privi delle condotte e [illegible] se essere dalla signoria nostra con [illegible] se saranno trovati contrafar [illegible] lo, [illegible] esser [illegible] a quelli che alcuno di tali [illegible] [illegible] nelle [illegible] beni suoi se ne saranno, se non [illegible] la signoria nostra. Li quali [illegible] debbano esser posti, e star in [illegible]

... un anno, e rimandat al detto [illegible], qual s'intendi ... cominciasse; sì che stassero a continuo tutti li anni 20, e questo tante volte quante contrafaranno. Dichiarando che quelli li quali rivocati ... contra questa nostra ... zione andassero a combatter al [illegible] della [illegible], incorrano nelle pene ...

... tio questio in hac sectione evolvenda. [illegible] ... civis incedentis ... peccati, ... interius ... sitere ... invasori ... interius ... exterius ... civitatis ... ... verum ... et ... non ... aggressori ... ... re cooperet, ... exterius et ... in ... consentiat. Quare ... sola ... ... sione questio agitatur.

Conclusio III.

Pro defensione pudicitiae invasorem eius occidere non licet.

Prob. Huiusmodi casus non ... neque a ... neque a Conciliis aut Pontificibus excipitur a prohibitione generica non occides. Ergo ... non licet pro ... occidere ... in integritate ... ... debent ... imo et ... offerendi ... Sed non licet ... pro pudicitia quae tamen consistit in ... animi ... potest, ... invaso... morte ... mulier ... interiore ... non ... queat et ... in ... si ... ... et corona ... capit ... hac ... ... in ... et ... ... conti... ... arbitrio ... ... quis ... ... constituta ... violento ... ...

non

non intelligo =.

Objicies. Potest ergo vitam suam spirituale praeponere corporali spirituali illius, qui ex sua duntaxat malitia huic periculo se committit. Ergo potest stupratorem occidere cum ejus causa versatur in manifesto periculo succumbendi tentationi, nec possit sibi spondere victoriam in tam lubrico conflictu

Respondet Augustinus loc. cit. cap. = nemo sanus certus de futuro adulterio, quam certus de praesenti homicidio... caeterum absit a mente christiana, quae in Deo fidit, in eoque spe posita, ejus adjutorio nititur; absit inquam ut mens talis quibuslibet ... voluptatis ad consensum turpitudinis cedat =.

Ista quaestio est an necesse liceat invasorem occidere a quo occidendus est si non occidat. Antequam causae tractationem ingrediar, quae penes ... certa sunt praemitto. In confesso est apud omnes, hanc occisionem fieri debere cum moderamine inculpatae tutelae quibus verbis plures cautiones comprehendi videntur, quas enumerari, et expendi oportet.

Prima cautio est, ut aggressio sit actualis, sit injusta, et vera pro vita ... itaque aggressio actualis requiritur ... enim aggressio non est, ... aggressio nec ... tibi licet, quod ad vitam ... Ergo ... ante, vel post actualem aggressionem non licet quempiam occidere. Unde ... ille, qui te invasit, post vulnus ... in fugam se dedit tu fugientem insequi, ... et ... Neque occidere si aggressor destitit, aut ob vulnus acceptum jam ... amplius non ... tunc enim aggressio cessavit. nec repulsares injuriam, ... sed eam vindicares, quod nunquam privato licet dicente Domino mihi vindictam ... retribuam. Ob eandem causam non potes per occisionem eum praevenire, qui te ad occidendum quaerit

Deinde injusta aggressione ... nec est lictores et carnifices ... occidere licet si propter commissum crimen sententia lata erat a Republica vel alicui regenti ... eundem necandi, non inest vel minimam injuriam ...

2 5 ...

..., aliquin ... ... parte

Ob defectum vero ... aggressionis non licet interficere ... accusatorem, ... testes, aut iniquum judicem a quo praevidet ... injustam mortis sententiam ... Tunc enim non ... sed calumnia ... quae ... servato juris ordine non ... auctoritate ... debet. Hinc sequens propositio ab Alexandro VII proscripta est: == licet interficere falsum accusatorem, falsos testes ac etiam judicem a quo iniqua certo imminet sententia, si alia via non potest innocens damnum evitare == Quae propositio ... , ... , et homicidiis. ... persuaserant ... injuriam ... et mortem ... accusatorum, et judicum morte declinari posse.

... cautella est, ut a caede ... abstineas, si vitam tuam servare ... sine nece invasoris, atque id praecise facias, quod ad tuae vitae defensionem ... ... inferat majus damnum, aut utaris vi majore quam necesse sit defensionis ... ... injusta. Hinc si solis ... ... armis uti non debes. si sola ... ... repellere vales, occidio licita non est. si fugae via ... , arripienda est. ... ... sunt qui ... ... , et viros nobiles ... inquinat fuga et ignominia; absit enim, ut christianus ... ignominiam ... existimet, quae judice Deo nobilissima est.

... cautella est, ut nihil ex odio ... animo ... fiat ut mors invasoris per se non intendatur, sed sola propriae vitae conservatio ... tanquam finis ... enim ... auctoritate ... non est finis ... in actione ... Hanc doctrinam ... ... Angelicus ... 64 Art. ... his ... : ... ... non licet nisi publica auctoritate ... ... intendat ... hominem ... == ... tamen ... intendit ... tanquam medium ... ... vult licite finem licite velle ... ... et medium ... ...

etiam

[illegible] traditionis. De originatis tres, [illegible] Antiquis et [illegible] Recentiores, ut asserit Peter Henno, [illegible] esse injustos aggressore [illegible], cumque qui invadit, nec occisione [illegible] Oppositam sententiam propugnant cum Sancto Thoma, Bonaventura et Antonino fere omnes Theologi et Juristae, [illegible] a molioribus opinionibus abhorret.

Conclusio IV.

Servatis cautionibus quas recensuimus, licita [illegible] occisio in defensionem propriae vitae.

Ostenditur primo auctoritate. Cap. 22 Exod. haec habentur [illegible] si effringens fur domum aut suffodiens fuerit inventus, et accepto vulnere mortuus fuerit, percussor non erit reus sanguinis: quod si orto sole hoc fecerit, homicidium perpetravit = Quem locum interpretans S. Augustinus quaest. 84 in Exodum ait = intelligitur ergo tunc non pertinere ad homicidium si fur nocturnus occidatur, si autem diurnus, pertinere. Hoc est enim quod ait si orto sole super eum [illegible], poterat [illegible], quod ad furandum non ad occidendum venerit = Hic uterque textus Exodi, et Augustini adducitur, et confirmatur capite [illegible] [illegible] de homicidio, cujus capituli titulus est non [illegible] fur [illegible] nocturnus sive diurnus, [illegible] sed. Et capite [illegible] ejusdem tituli dicitur si vim [illegible] omnes leges et omnia jura permittunt [illegible] Innocentius III. [illegible] Bandes [illegible] Catholicus [illegible] Romanus parte 2. capit. 3. n. 4 in [illegible] causa [illegible] hac lege [illegible] satis [illegible] =

Ostenditur [illegible] communi ratione [illegible] ergo [illegible] ad [illegible] [illegible] Trinc [illegible] causa [illegible] dicit = [illegible] et necessitas [illegible] et [illegible], [illegible] [illegible] a [illegible] a capite, [illegible]

2.º Deinde [illegible] gradus, [illegible] forte videat proferre [illegible] caritatis invasione, reipsa tamen [illegible] non [illegible] armo [illegible] [illegible] seu [illegible] aperit invadenti innocentes, si [illegible] certi [illegible] se non posse ab injusto occidi.

Objicies [illegible] qui acceperint gladium gladio peribunt ut dicitur est Matth. 26. ergo [illegible] etiam invasus si gladio [illegible] [illegible] non [illegible] [illegible] animi [illegible] [illegible] at non [illegible] [illegible] [illegible]

Ad primum respondeo negando consequentiam. Locus enim [illegible] de eo qui gladium [illegible] sine legitima auctoritate quemadmodum Petrus ea [illegible] erat. qui Christi Domini regnum non [illegible] [illegible] non [illegible] resistere, nec [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] vero in casu nostro armatur ex potestate [illegible] [illegible] [illegible] naturali [illegible] lex divina permittit [illegible] [illegible] [illegible] [illegible] [illegible] in Joanne cap. 55. [illegible] Petrus [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] non [illegible] [illegible] [illegible] [illegible] [illegible] vestras multitudine injuriae

[illegible] [illegible] sanctorum Patrum S. Augustinus [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

quid

[illegible] est occidere innocentes nec nocentes licet, et epist. 56. christiano [illegible] non licet injustitiam [illegible] [illegible], sed [illegible] [illegible] S. Ambrosius l. 3. de officiis cap. 4. ait sibi non [illegible] = quod vir christianus et justus, et sapiens quaerere sibi vitam aliena morte [illegible] debeat utpote qui etiamsi in latronem armatum incidat, ferientem referire non possit, ne dum salutem defendit pietatem contaminet. De quo [illegible] evangelii [illegible] aperta et evidens sententia: reconde gladium tuum. Quis latro detestabilior, quam persecutor, qui venerat, ut christum occideret = Ipse S. Bernardus tractatu suo de nova militia, = o, inquit, qui nec dum erit nullo [illegible] tempore, sed tantum evadendi remedio [illegible] honesti, sed [illegible] quidem bonam dixerim victoriam, cum de [illegible], in corpore [illegible] in animo mori [illegible] sit . . quis igitur finis, vel fructus saecularis hujus non dico militiae, sed malitiae, si et occisor lethaliter peccat, et occisus aeternaliter perit = ? Ipso opponi praeterea possunt [illegible] de patientia cap. 10. Lactantius Divinarum institutionum l. 6. cap. 20. Basilius epist. 53. [illegible] l. 2. ita ut communis Patrum traditio videatur vetare necem injusti aggressoris. Accedit demum responsum Nicolai Papae distinctione 50. canone 6. = pro [illegible] consuluisti scilicet, qui se defendendo paganum occiderunt [illegible] [illegible] poenitentia emendati possint ad gradum pristinum redire, aut ad altiorem ascendere. Scito nos nulla occasione [illegible] nec ulla [illegible] [illegible] contra [illegible] [illegible] [illegible] [illegible] occidendi =

Resp. ordine ad [illegible] Augustinus non [illegible] ut invasor [illegible] occidi non [illegible] tamen [illegible] occidi [illegible] . . aliter sibi contradiceret [illegible] solutio ex contextu patet; [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] christianum [illegible] [illegible] a [illegible] . a Romanis [illegible] [illegible] christianus [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

262 interdictione eos repellere vel impugnare.

S. Cyprianus [illegible] de vindicta, et de casu persecutionis quae infertur volente Trinitate.

S. Ambrosius in primo [illegible] de eo sermone [illegible] qui alteri tabulam eripit in naufragio, ac proinde [illegible] in [illegible] [illegible] extra necessitatis casum [illegible] [illegible] in excellentia [illegible] [illegible] [illegible] etiam pro [illegible] [illegible] S. Ambrosius [illegible] officiis [illegible] [illegible] excellentia [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] lex vetus [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] caritatis [illegible] in evangelio caritatis perfectio [illegible] [illegible] et [illegible] non fuit lex e [illegible] et perfectionis [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible].

S. Bernardus [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] terrena [illegible] [illegible] [illegible] [illegible] [illegible].

Ad [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] hodie vindicta, defensione non necessaria aggressorem occidunt, et [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] inculpatae tutelae limites non transiliant.

[illegible] justa ordinem caritatis [illegible] corporalem [illegible] spiritualem proximi [illegible] ergo ad illam [illegible] non licet [illegible] aggressorem [illegible]

Resp. legem caritatis obligare ut nostra temporalia [illegible] pro [illegible] proximi [illegible] profundamus, quando [illegible] in necessitate [illegible] Ille vero qui me invadit armata manu non est in necessitate [illegible] iniquitate [illegible] neque meo [illegible] cum [illegible] se [illegible] nempe desistendo ab iniuria. Quocirca [illegible] l. de mendacio cap. 6. ait temporalem [illegible] vitam suam pro aeterna vita proximi non [illegible] christianus amittere intelligendum [illegible] omni in [illegible] [illegible] vitam [illegible] necessaria ad [illegible] spiritualem proximi salutem. [illegible] non est necessaria ad salutem [illegible] quaest. 64. art. 7. [illegible] homo [illegible] moderate tutelae [illegible] occisione alterius [illegible] tenetur [illegible] vitae suae [illegible] quam vitae alienae. [illegible]

[illegible] invasum legitime se defendere [illegible] causam dederit invasioni [illegible] [illegible] [illegible] ergo [illegible] amici [illegible] [illegible] non teneri [illegible] [illegible] [illegible] ad actualem invasionem [illegible]

[illegible] [illegible] [illegible] periculo se defendere. [illegible] ad conservationem [illegible] vitae [illegible] medicinam, ex qua [illegible] [illegible] in [illegible]

[illegible] respondes [illegible] [illegible] [illegible] innocentem [illegible]

[illegible]

[illegible] ex illa [illegible]

[illegible]

occurrunt [illegible] ex intentione [illegible]

[illegible] ad [illegible] licet [illegible] combustio [illegible] et nunc [illegible]

[illegible]

[illegible]

[illegible]

[illegible] intellectus

[illegible]

[illegible]

[illegible] Directe et [illegible]

[illegible]

[illegible] mortale peccatum [illegible]

[illegible]

[illegible] ex Conciliis [illegible] [illegible]

[illegible]

[illegible] Concilii

[illegible]

[illegible]

[illegible]

[illegible] meditatione [illegible]

[illegible]

[illegible] An. 167[illegible] [illegible] XX [illegible]

[illegible]

[illegible] [illegible]

[illegible]

[illegible] liceret [illegible] esset ne [illegible] [illegible]
[illegible] partu negligant, et impediant, ut [illegible] [illegible] [illegible]
in humana [illegible] sentimentu[m] [illegible] [illegible] [illegible]
[illegible] timor [illegible] [illegible] dicta abortus procurandi [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] matre [illegible]
[illegible] medicinal[illegible] [illegible] ad [illegible] [illegible] [illegible] directe
[illegible] [illegible] [illegible] quamvis probabile sit [illegible] [illegible] [illegible]
[illegible] nam in animo [illegible] [illegible] [illegible] [illegible] animam [illegible]
[illegible] [illegible] [illegible] licet. [illegible]
[illegible] etiamsi [illegible] non [illegible] certus sit et [illegible] animatus et matris [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
subvenire alteri, nisi alter [illegible], [illegible] [illegible] [illegible]
[illegible] licet, [illegible] [illegible] [illegible] et animatus esset [illegible]
[illegible] [illegible] [illegible] habet anima [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] esset [illegible] [illegible] anima [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] et [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] n.o 55 — videtur probabile [illegible] [illegible] [illegible] [illegible]
[illegible] rationalis et tum [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
fex ne [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
et reservatum sedi Apostolicae, praeterquam in articulo mortis.

[illegible] [illegible] [illegible] matre [illegible] [illegible]

—05 [illegible] medicamentum quod ex natura sua ad abortum tendit, etiamsi [illegible] non

[illegible] animati [illegible] erit ex natura rei, et ex ordinatione [illegible] [illegible]

animati, et animati [illegible] [illegible] Tertulliano, [illegible] in Apologetico

[illegible] [illegible] homicidii [illegible] [illegible]

[illegible] in domine [illegible] [illegible] Homicidii [illegible]

[illegible] [illegible] [illegible] [illegible].

[illegible] [illegible] Basilius [illegible] ad [illegible]

[illegible] quae de [illegible] [illegible] poenas [illegible]

[illegible] non attendit.

[illegible] [illegible] animati abortum procurat

[illegible] [illegible]

[illegible] medica [illegible] [illegible] consultat, vel si [illegible] nimis

[illegible]

Antoninus: excipe tamen, si per inadvertentiam seu inconsiderantiam [illegible]

[illegible] [illegible]

[illegible]

[illegible]

[illegible]

[illegible] non prohibuerit [illegible]: — quod si abortus [illegible] animati [illegible]

[illegible]

[illegible] Gregorii XV in [illegible] [illegible]

[illegible] in [illegible] nostris [illegible]

[illegible] sed potius ad eos erit recurrendum, [illegible] casus ille [illegible]

[illegible]

[illegible] medicinam praeberi, quae directe, et per se tendit ad mortem matris [illegible] et non ad abortum?

[illegible] inde

[illegible] [illegible] in [illegible] [illegible]. [illegible] quod hunc abortum [illegible] ex natura [illegible], [illegible] ex intentione [illegible] [illegible] [illegible] matrem [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] conservationis [illegible] [illegible] conservanda naturam [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] mediamente [illegible] ex sola intentione procurandi abortum. [illegible] [illegible] [illegible] infamiam vel mortem [illegible] [illegible] ab extrinseco. [illegible] [illegible] medicina per se directe nihil conferat ad mortem vel infamiam [illegible] [illegible] [illegible] sumatur [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] mortale, [illegible] adhibere remedium natura [illegible] ordinatum ad morbum [illegible] [illegible] [illegible] medicamento abstinente probabile [illegible] prolem in lucem edendam [illegible], [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] salute aeterna [illegible] in extrema necessitate vitae [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]. Quod si medicina se [illegible] [illegible] [illegible] [illegible] aequale sit illius periculum, sive medicina sumatur sive [illegible] [illegible] huiusmodi remedium adhiberi, cum tunc vitae matris [illegible] [illegible] prolis periculo.

An conveniat huius sectionis breviter discutiendum est; an pro defensione [illegible] [illegible] [illegible] [illegible] ad vitae [illegible] liceat invasorem [illegible].

[illegible] tenemur [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] iustitia [illegible] [illegible] [illegible] [illegible] contra [illegible] [illegible] excellentes [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] debet [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ergo [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] invadentem defendere [illegible] tenemur [illegible] [illegible] invasorem [illegible] [illegible]

[illegible] nostra [illegible], et [illegible] nec moveat ipsius dominio.

[illegible] e occisio invadentis [illegible] mentis [illegible] erit occisio ejus [illegible] violat [illegible]. [illegible] tamen et [illegible] [illegible] [illegible] quod [illegible] [illegible] [illegible] [illegible] tenetur [illegible] [illegible] etiamsi [illegible] nolit, quia [illegible] habet, et mariti injuria vehendat.

[illegible] [illegible] [illegible] [illegible] [illegible] cum occisio [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ex caritate [illegible] [illegible] ex justitia [illegible]. [illegible] vero [illegible] se defendi nollet, [illegible] sit [illegible] non potest ea [illegible] [illegible] defensionis [illegible].

Excipe [illegible] [illegible] occidi ex amore [illegible] [illegible] a [illegible] occisionem ejus conjunctam [illegible] cum aeterna ipsius ruina. tunc [illegible] [illegible] parcendum, quam alteri succurrendum.

Excipe [illegible] si aggressor sit specialiter parentela, aut observanda [illegible] [illegible] [illegible] [illegible] non [illegible] permittere, [illegible] [illegible] occisione suspectius [illegible] extraneo.

[illegible] cantus [illegible] [illegible] proximi [illegible] [illegible] [illegible] possumus [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] proprie vitae; [illegible] vitam [illegible] vita [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

non

[illegible] bonum multorum, semper prævalere debet bono privati. [illegible] te [illegible] et [illegible] bono publico subditorum, tenentur lege justitiæ [illegible] propriæ vitæ periculo [illegible], [illegible] latrones, [illegible] [illegible] [illegible] [illegible]. [illegible] tamen [illegible] vitæ [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] pro [illegible]

Sectio IV.

Quis restituere debeat ratione homicidii aut mu-[illegible]tilationis, quid restituendum sit, et quibus

Quinam ob homicidium, vel mutilationem restitutioni obnoxii sint [illegible] [illegible]. Nunc [illegible] [illegible] calamo percurramus. Prima quæstio est, [illegible] [illegible] [illegible] teneatur et [illegible] restituere. [illegible] casuale [illegible], quod est præter intentionem occidentis. [illegible] distingui solet [illegible] [illegible] et simpliciter casuale, [illegible] nec in se nec [illegible] [illegible]. [illegible] culpa [illegible] [illegible] [illegible] [illegible] restitutionis, [illegible] [illegible] [illegible] tarium nec proprie homicidium [illegible] sed simplex occisio. Alterum homicidium casuale [illegible] [illegible] non [illegible] [illegible] tamen [illegible] [illegible] ter [illegible] [illegible] ex voluntario indirecto et ex casu. [illegible] [illegible] et [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

Resp. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] non voluntaria nec in se nec [illegible] [illegible] [illegible] [illegible] homicidii [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] vel malitia aut negligentia medici qui [illegible] curavit [illegible] [illegible] vulnus [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] homicida sed [illegible] [illegible] vulnere [illegible] [illegible] [illegible]

[illegible]

III. [illegible]

[illegible] diligentia, quae viri prudentis judicio adhiberi debuit. Quocirca [illegible]

[illegible]

Resp. [illegible] peccato homicidii, [illegible] ex una mors alicujus consecuta [illegible] si nullo modo praevideri [illegible] in actione illa [illegible] periculum incidendi, quia communiter ex actione illa [illegible] solet. [illegible]

[illegible] nec certo nec verisimiliter sequatur, si tamen sequatur [illegible]

[illegible]

[illegible] vel caeca [illegible]

[illegible]

post

canti ecclesiastici, prohibentis clericis ejusmodi venationes, sed non erit reus homicidii si inde casu sequeretur. Ratio est quia conditio clerici non efficit ut vel minus adhibeat [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] casus in clerico sit reservandus.

Resp.° 3tio reus homicidii et restitutioni obnoxius est primo qui [illegible] [illegible] [illegible] [illegible] [illegible] morte [illegible] [illegible] [illegible] [illegible] [illegible] praevidit, aut praevidere potuit ac debuit, tunc enim homicidium [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] negligentia [illegible] [illegible] clarius loco cit. homicidium [illegible] [illegible] [illegible] non [illegible] [illegible] negligentiae [illegible] [illegible] [illegible]

[illegible] qui exercent [illegible] [illegible] ne [illegible] [illegible] [illegible] [illegible] parentes qui sunt culpae mortalis, qui tenellos [illegible] [illegible] [illegible] [illegible] non conservant [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] aliunde adhibita ut experientia testis est — [illegible] [illegible] et [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] homicidii rei inveniuntur — aut [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] nostrae Dioecesis sub numero 4to hunc casum reservarunt his verbis [illegible] [illegible] mulier etiam praeter matrem et nutricem in lecto [illegible] [illegible] [illegible] aut [illegible] tenuerit, si periculum [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ex qua omissione periculosa mors [illegible] [illegible] [illegible] [illegible] omissione periculosa [illegible] [illegible] [illegible] [illegible] [illegible] omissionem [illegible] [illegible] [illegible] [illegible] Unde Thomas [illegible] [illegible] [illegible] quando ex ipsius imperitia vel negligentia [illegible] [illegible] [illegible] [illegible] Quamvis [illegible] [illegible] [illegible] homicidii [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] tamen [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] homicidii [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

 [illegible] convert[illegible] [illegible] [illegible]

[illegible] moveat et [illegible] [illegible] [illegible] [illegible]

[illegible]

[illegible] a privata [illegible] [illegible].

[illegible] [illegible] [illegible] [illegible] non [illegible] [illegible] privata [illegible] et [illegible] [illegible]

Nec [illegible] [illegible] adversarii [illegible] [illegible] in [illegible] [illegible] [illegible] [illegible] at hoc [illegible] [illegible] [illegible] amore [illegible]

[illegible] [illegible] intellectu [illegible], quando [illegible] praecedente provocatione [illegible] et [illegible] [illegible] moveant ad [illegible], tunc enim [illegible] [illegible] [illegible] [illegible] et [illegible] [illegible] [illegible] non [illegible] [illegible] [illegible] [illegible]

[illegible]

[illegible] a restituendo non est [illegible] [illegible] [illegible]

[illegible] [illegible] non teneri minime eximere a restitutione. [illegible]

[illegible]

[illegible]

[illegible] non [illegible]

[illegible]

[illegible]

[illegible] consortem [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] quantum convenit [illegible] proprio [illegible]

[illegible] [illegible] restituenda [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] clerici sunt non [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible]

Tertia quaestio est an debeat restituere, qui [illegible] se [illegible] [illegible]

[illegible]

[illegible]

[illegible]

Ista quaestio an [illegible], qui occidit in occulto [illegible] contrahat [illegible]

[illegible]

[illegible]

[illegible] [illegible] consensit causam [illegible]

2 / [illegible] tione si vero ex intentione interfecerit [illegible] ut inde damnum [illegible] evenirit, vero advertent vel debuerit advertere eventurum [illegible] [illegible]
[illegible]
[illegible]
[illegible] abstinere quae verba [illegible] detrimentum [illegible] [illegible] perniciosa [illegible] actus [illegible] a suo [illegible], vero [illegible] ad [illegible] [illegible]
[illegible]
[illegible] actione suo evenit [illegible] advertere illud esse secutum [illegible] actione sua [illegible] considerare vel cavere [illegible] ratione tertii considerare et [illegible]
[illegible]
[illegible]

[illegible]
[illegible]
[illegible]
[illegible] probabiliter [illegible] interfectorem [illegible] in [illegible] [illegible]
[illegible] se intenderit tunc [illegible] damnum ex industria procuravit, [illegible] medium ex [illegible]
[illegible] ordinatum ad damnum p. injuriam inferendum

[illegible]

Deo in primis damnorum genera in [illegible] injusta homicidio, vel mutilatione
[illegible]
[illegible] consistit [illegible] illud [illegible]
[illegible] sive vita animatione [illegible]

[illegible] compensatione injuriae personalis [illegible] restitutione in [illegible]
[illegible] attendendum ex [illegible] personae
[illegible]

[illegible] homines [illegible] si adhuc vixit [illegible]

[illegible]

[illegible] ratio [illegible] quod[illegible]

[illegible]

[illegible]

[illegible]

[illegible] mutilator. et occisor resarcire omnia damna [illegible] quae morte [illegible] et vice [illegible]. Communis sententia

Prob. Tenetur ad restitutionem qui est injusta, et efficax causa damni. [illegible] Haec vero damna oportet compensari [illegible]

[illegible]

[illegible] Verum nihil ordinarie restituendum est pro injuriis [illegible]

[illegible]

[illegible] quo in corollario [illegible]

[illegible]

210 [illegible]

[illegible] ita vale

[illegible]

Sed ex communi sententia [illegible]

[illegible]

[illegible]

Sperandum [illegible]

[illegible]

[illegible] una moraliter persona [illegible]

[illegible] remanserat [illegible]

[illegible] ex [illegible] altissimo rerum [illegible] utilitas [illegible]
ad hac [illegible] ut, [illegible] supra [illegible] etiamsi [illegible] remiserit [illegible]. Hac [illegible]
[illegible] inde proficiscitur, quod videlicet [illegible], [illegible] qui [illegible], et alii debebant. [illegible]
[illegible] quod habet [illegible]
[illegible]
[illegible] tamen [illegible]
[illegible]
[illegible] sufficiat
[illegible].

[illegible] non sufficiat [illegible]
[illegible] probabilior
[illegible]
[illegible]
[illegible] erant ergo
[illegible]
[illegible] iustitia [illegible]
[illegible] iustitia [illegible] tamen [illegible]
[illegible]
[illegible]
[illegible]
[illegible]

[illegible]
[illegible]
[illegible]
[illegible] ut nos ipsi [illegible]
[illegible]

minori, alius ex animi liberalitate conveniunt erant. [illegible] [illegible] et [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] et sane [illegible] [illegible] animi [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] non requirit, ut [illegible] [illegible] animo [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] sive ex [illegible] et animo [illegible] [illegible] [illegible] fiat.

[illegible] [illegible]

[illegible] vero [illegible] animo [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] impedit eu, dolo, fraude [illegible] beneficium acciperet, cau- [illegible]

[illegible] que contingentiae [illegible]

[illegible] sententia [illegible] [illegible]

[illegible]

[illegible] circumstantiae [illegible]

Sectio V

De [illegible]

actus illatis et de communi reparatione

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] mortale [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] seu [illegible]

[illegible]

[illegible] spiritualis, vel matrimonii, aut [illegible]

[illegible] habeant tamen, [illegible]

[illegible] comparari

[illegible]

[illegible] inter [illegible] matrimonialis [illegible]

[illegible] pariter inclusive [illegible]

[illegible] carnaliter cognovit [illegible]

[illegible]

[illegible] cognovit uxorem [illegible]

[illegible]

[illegible]

[illegible]

[illegible] remisit [illegible]

[illegible] dote inducunt

[illegible]

[illegible] secum [illegible] copulavit [illegible]

[illegible]

[illegible] consentientis [illegible]

[illegible] sponsalibus [illegible] quo [illegible] quo contraxerit [illegible] vera, quae cadit [illegible] haec enim non minuerint, sed [illegible] augentur [illegible] reconciliant [illegible] amicabiliter [illegible] non est [illegible] propria talis, sed [illegible] ipsa in [illegible].

[illegible] non est [illegible] restitutione in foro conscientiae. [illegible] matrimonium [illegible] [illegible] se non virgine [illegible] ius [illegible] et sub his [illegible] praesumptionibus sibi [illegible] ad virginem [illegible] res [illegible] crimen [illegible] conventa [illegible]

[illegible] convenit. [illegible] crimen [illegible] in carcere sit [illegible]?

Resp. non [illegible] poena [illegible] ita ut [illegible] in ordine ad [illegible] sed [illegible] [illegible] convenit [illegible] Quod si [illegible] honestam [illegible], ut [illegible] est.

Quid si ex tali concubitu proles suscepta sit?

[illegible] annis [illegible] tenetur [illegible] corrupta [illegible]

[illegible]

[illegible] ipso [illegible] [illegible] non [illegible] [illegible] cognoverit [illegible] [illegible] [illegible] ex quo [illegible] [illegible] [illegible] contractione [illegible] sufficit ad generandum.

[illegible] proles [illegible] [illegible] in prole [illegible] [illegible] [illegible] [illegible] [illegible] a Capitulo [illegible] secundum communem sententiam. [illegible] dicas [illegible] si proles sit ex adulterio procreata.

[illegible] an ide [illegible] consentiente, [illegible] [illegible] restituere [illegible] [illegible] conditione [illegible] in matrimonio [illegible].

[illegible] [illegible] [illegible] filie [illegible] [illegible]. [illegible] cap. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] injuria [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] parentibus, et familie [illegible].

[illegible] [illegible] articulo [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ratione conjugii [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] ne [illegible] amicitia [illegible] etiam ex [illegible] qui ex ejus castitatem [illegible] sert = [illegible] nos [illegible] = habet [illegible] duplicem [illegible] annexa. Una [illegible] que parit [illegible] non si [illegible] tamen [illegible] et sic tenet [illegible]. Alia [illegible] injuria [illegible] unde [illegible] ego teneor [illegible] = Doctrina [illegible] probatis [illegible] in- quirent: in [illegible] non tenetur ei. [illegible] autem tenet, quia inju- riata [illegible]. Unde [illegible] vel [illegible] Hec autem injuria [illegible] parentes noverint [illegible] grave [illegible] ea gravissima mala consequuntur. Unde [illegible] [illegible] ad hanc [illegible] signa [illegible], [illegible] pellere, etc.

[illegible] an [illegible] consentientis [illegible] etiam debeat res- tituere [illegible] et filia sua [illegible] marito [illegible] [illegible]. [illegible] parentibus [illegible] dos mille [illegible] [illegible] collocanda [illegible] necessaria [illegible] dos [illegible] parentibus [illegible] restituere? Non pauci et graves [illegible] pro sententia affirmativa [illegible]. Nos illis adjungimus, qui negant illud esse [illegible] [illegible] filia [illegible] remanere [illegible] [illegible] non magis [illegible] [illegible] consequentiam [illegible] [illegible] pater [illegible] compensationem pecuniariam Patri prestandam. [illegible]

[illegible] inentis [illegible] [illegible] lex [illegible] non prohibeat [illegible] etiam [illegible]

[illegible] non potest tamen virginitatem prodere, qui tamen [illegible] quia [illegible] corrupta [illegible] contra justitiam [illegible] ita [illegible] non [illegible] idem tenet [illegible] ipse [illegible]

Resp. libere [illegible] ac proinde [illegible] tenetur tamen [illegible] et [illegible] non tenetur [illegible] Deinde [illegible] tamen [illegible] et supra [illegible] conservare [illegible] [illegible]

Queres [illegible] et ad [illegible] [illegible]

[illegible] ejus [illegible] ad arbitrium [illegible] vel [illegible] ea comparat. [illegible] non [illegible]

[illegible]

aut

[illegible] tamen [illegible] matres [illegible] et [illegible] virtus [illegible] et [illegible] non [illegible]

[illegible] et [illegible] recat [illegible]

[illegible] aut [illegible]

[illegible] atque ex reverentia erga illud, et ex timore [illegible]

[illegible] non [illegible] ex omni [illegible] convenit et

[illegible] non [illegible] tamen et

[illegible] seu [illegible] principe [illegible]

[illegible] sicut [illegible]

[illegible] matrimonii [illegible]

[illegible] poenas [illegible] si [illegible]

[illegible]

[illegible] De adulte[illegible]

[illegible]

[illegible] matrimonii [illegible]

[illegible] sententia [illegible]

[illegible] matrimonium contrahere [illegible]

[illegible] sufficientes [illegible]

[illegible]

[illegible] nuptias [illegible]

[illegible] non

[illegible] matrimonii [illegible]

[illegible] foemina [illegible]

[illegible] Hec sententia fuit maxime [illegible]

2 bt [illegible] pregnat [illegible]

[illegible] Comme [illegible]

[illegible] nisi ea stupratori nubat, aut [illegible] occulta sit.

[illegible] maritum [illegible] et ipsa [illegible]

[illegible] ingressa [illegible] tum nulla [illegible]

[illegible] putant [illegible] probabilius [illegible]

[illegible] conversatione [illegible]

[illegible] ipso [illegible]

[illegible] compensari [illegible] neque ex eo [illegible] nulla [illegible]

[illegible] damna compensare [illegible]

ex ejus injuria derivent.

[illegible] virginis, qui eam decepit, [illegible] conjuge.

[illegible]

[illegible] sententia [illegible]

[illegible]

[illegible]

[illegible] poena [illegible] et inconvenientia [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] pro violatione promissionis [illegible] tione juris [illegible] superiore [illegible] corrupta [illegible] acquisivit ad ejus [illegible] ergo.

Quod [illegible] matrimonii [illegible] habuit [illegible] animo se obligandi [illegible] actu matrimonii [illegible] omni [illegible] obligatione [illegible] animo [illegible] jus [illegible] habet [illegible] ergo [illegible] tollere [illegible] non [illegible] justitia [illegible] promissione [illegible] verbo [illegible] quamvis [illegible] matrimonii [illegible] tamen [illegible] ipsa velit, ratione scilicet injuriae reparandae.

[illegible] non [illegible] consensu [illegible] impedit [illegible] ergo non [illegible] Deinde [illegible] non consenserit [illegible] tori.

[illegible] omnes [illegible] non [illegible] etiamsi [illegible] virginitatem [illegible] tamen [illegible] ubi [illegible] non [illegible] consensu altero.

[illegible] in foro [illegible] generant [illegible]

quam

[illegible] de [illegible] Bellis [illegible] quando [illegible] [illegible] [illegible] ex [illegible] [illegible] legitimavit, [illegible] sufficiente [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] promissionem. Verum, [illegible] [illegible] [illegible] [illegible] [illegible], tamen [illegible] [illegible] [illegible] [illegible], [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], tamen [illegible] [illegible] [illegible].

[illegible] si ille qui [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], si matrimonium [illegible] promiserit, si vero [illegible] [illegible] [illegible] non [illegible] [illegible] [illegible] ipse [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] infamia.

[illegible] [illegible] [illegible] [illegible] tunc [illegible] [illegible] [illegible] [illegible] concedat [illegible]; tunc etiam ei qui promisit nuptias, infert injuriam, et [illegible] intervenit causam [illegible] promissionis [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] illum a [illegible] [illegible] non [illegible] [illegible] similiter [illegible] [illegible] stuprator qui non vult eam ducere [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] in [illegible] [illegible] [illegible] qui matrimonium [illegible] [illegible] causa criminis [illegible].

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] matrimonium [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] si vero [illegible] [illegible] [illegible] [illegible] matrimonium [illegible] [illegible] [illegible] [illegible] [illegible] tunc [illegible] [illegible] [illegible] [illegible], et [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible].

[illegible] si [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] vel [illegible] [illegible] [illegible] [illegible] [illegible] defloratione si [illegible], et [illegible] feminis [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] satisfacit feminae [illegible] [illegible] stuprator [illegible] matrimonium [illegible] [illegible] [illegible] [illegible] [illegible], et [illegible] [illegible] [illegible] [illegible] [illegible] vel debitum [illegible], [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] promissione [illegible].

[illegible] [illegible] [illegible] facto a viri, hac videlicet se injungit [illegible], [illegible] [illegible] voti [illegible] [illegible] libera gratuita voluntate voventis, qui ipse [illegible] [illegible] [illegible] [illegible] [illegible] imponit non valet [illegible] [illegible] vel se [illegible] [illegible] obligationis in jure alieni prejudicium, quia non habet ipse [illegible] auctoritatem [illegible] [illegible] [illegible]. Unde votum [illegible] [illegible] [illegible] involvit, si [illegible] voti [illegible] re [illegible] nocumento [illegible] [illegible] [illegible] quod si quis [illegible] [illegible] contra in [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] nec haberet aliunde, quo illud resarciet [illegible] [illegible] compensare pro illa contra voto promissa [illegible]. ergo a pari in casu nostro [illegible] obligatio [illegible] oritur ex [illegible], [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] non [illegible] obligatio voti quae ex liberali promissione ortum habet, huic alieno juri [illegible]. [illegible] ergo [illegible] juri alieno ejus voti executio [illegible] graviter injuriosa proximo, executio [illegible] illicita respectu [illegible] contracta.

Dicebam etiamsi quis sequi velit contrariam opinionem quam [illegible] [illegible] Layman, praevalere videlicet votum praecedens, et promissionem [illegible] [illegible] [illegible] [illegible] [illegible] re illicita seu contra [illegible], et [illegible] injuriae aut damni il[illegible] non [illegible] determinate obligationem [illegible] sed vel [illegible] [illegible] [illegible] [illegible] compensandi [illegible] tamen [illegible] [illegible], [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], aut [illegible] [illegible] executionem [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] seu obligatio [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] extendit etiam ad ea media quae licita et [illegible] sunt ad [illegible]. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] aut commutationem [illegible] quam facile impetrabit interveniente causa [illegible] [illegible] [illegible]. ergo [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] non [illegible] [illegible] [illegible] [illegible] [illegible] quo non [illegible] [illegible] contrahendi [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] non [illegible] [illegible] [illegible] praestare, sed eo ipso [illegible] [illegible] animadvertit [illegible] [illegible] [illegible] [illegible] possit. [illegible] tamen [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] intelligere promittendo [illegible] [illegible]

dispensa

[illegible] corruptoris [illegible] non dissolvant. [illegible] [illegible] a procurandis [illegible] non [illegible] si [illegible] erit et ille [illegible] se [illegible] [illegible]

Quando corruptor [illegible] dispensationem [illegible] ex communi[illegible] matrimonii [illegible] [illegible] quod [illegible] ex justitia [illegible] non contrahendo [illegible] matrimonio [illegible] [illegible] doctrina [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] non corrupta [illegible] matrimonii [illegible] [illegible] ita ut [illegible] non possit a contractu [illegible] resolvendi [illegible] promissionem [illegible] ex [illegible] et ex [illegible]

[illegible] corruptor [illegible] [illegible] [illegible] ex ambiguitate sermonis, aut alio modo [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] multo [illegible] conditiones [illegible] [illegible] probari [illegible] [illegible] —

[illegible] teneatur tamen corruptor [illegible] ad [illegible] [illegible]?

[illegible] ex [illegible] [illegible] vero [illegible] major, vel minor [illegible] virgine [illegible] major, vel minor [illegible] ad [illegible] fraude [illegible] [illegible] promi-

[illegible] puella fuerit [illegible] [illegible] si [illegible]

[illegible] novisset non [illegible] [illegible] [illegible]

[illegible] restituere [illegible] [illegible] [illegible] et tunc [illegible]

[illegible] [illegible] et tunc nihil restituendum erit. Si non [illegible]

[illegible] [illegible] [illegible]

[illegible] ad matrimonium [illegible] promissi [illegible]

[illegible] [illegible] creditori [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] ut ait

[illegible] [illegible] [illegible]

[illegible] [illegible] si stuprator [illegible]

[illegible] [illegible] nuptias promiserit. [illegible] contrarium [illegible] [illegible]

[illegible] [illegible] [illegible]

137.

Sed quid [illegible], si stuprator qui superioris conditionis [illegible] nuptias vere promiserit, et a puella intercedens disparitas [illegible]?

[illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] promissionis vere, et a virgine [illegible] [illegible]

[illegible] inter inaequales [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] tamen [illegible]

[illegible] [illegible] [illegible]

[illegible] matrimonium [illegible] [illegible]

[illegible] [illegible] [illegible]

[illegible] Si tamen [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible]

Quid si [illegible] [illegible] [illegible]

[illegible] [illegible]

[illegible] [illegible] contra [illegible] [illegible] [illegible] matrimo-

nio-

[illegible]

[illegible]

[illegible]

gent vel altera [illegible] ejus [illegible] non [illegible] sed mariti [illegible] tion posito.

[illegible] primo [illegible] ex [illegible] ut in mariti [illegible] erit

Resp. primo [illegible] teneri [illegible] primo atque ex [illegible] compensare omnia damna quae [illegible] marito [illegible] non [illegible] filiis legitimis, aut [illegible] prole successione paterna [illegible] donationis [illegible] omnium damnorum causa sunt ergo integre resarcire illa debent. [illegible] fuerunt [illegible] principalis causa [illegible] posuit actionem injustam, ex qua [illegible] prolis generatio consequuta, cui [illegible] conjuncta sunt damna mariti et legitimorum heredum [illegible] tenent, [illegible] in defectu alterius.

Resp. 2°, adulterum [illegible] damni [illegible] etiam reverentiali uxori [illegible] solus adulter est principalis causa adulterii et damnorum inde consequentium. [illegible] causa [illegible] fuerit [illegible] ambo [illegible] principali causa [illegible]

Sunt [illegible] damna quae [illegible] non [illegible] adultera [illegible] tamen [illegible] causa hujus erroris [illegible]

[illegible] ... adulterii ... [illegible]

ob [illegible]

Secundo [illegible]

[illegible]

Resp. adulteram teneri [illegible] ... [illegible]

[illegible] ... memoria et retrahere [illegible] ... quantum permittit conditio ... [illegible] &c.

[illegible] ... proprie [illegible]

[illegible]

[illegible] ... adulterio [illegible] ... dicitur incertus ... sed mulier, que aliter [illegible]

[illegible] filii, [illegible] concernentis, [illegible] est non tenetur [illegible]

Et ea manifestatio [illegible] filii, [illegible] habebit [illegible] sed tenetur [illegible] matrimonium [illegible] tenetur credere etiamsi [illegible], [illegible] ratio [illegible] non [illegible] necessitate [illegible] quod maxime [illegible] propria [illegible] detrimento illius [illegible] credere [illegible] in nostro casu [illegible] testimonium matris [illegible] matrimonium [illegible] in [illegible] magis sibi [illegible] tamen [illegible] ut [illegible] adhibere [illegible] [illegible] [illegible]

[illegible]

[illegible] manifestatio [illegible] aut [illegible] Innocentius III [illegible] sicut [illegible] quamvis [illegible] fateri non [illegible] manifestatio [illegible] ita nec ille [illegible] [illegible] mulier [illegible] ad manifestandum [illegible] manifestare [illegible] [illegible] rino.

Dixi tamen ordinarie [illegible] [illegible]

... illa ex adulterio procreatis esse ... [illegible] ... eximere ...

... communiter ... maritum ... [illegible] ...

... in matrimonio ... [illegible] ...

... [illegible] ...

pre illius rei malitiae ... aut vexationis fuerit: tunc ... nocentis ...

aut altera ... damno innocenti ... [illegible] ...

... [illegible] ...

ve damnum, quod videt ... ille alterius &c.

... [illegible] ...

... maritum ... [illegible] ... maritime ... [illegible] ...

... [illegible] ...

... [illegible] ...

... [illegible] ... servient,

... damnum ... [illegible] ...

... Ratio quia ... [illegible] ... innocens ...

... [illegible] ...

... [illegible] ...

... [illegible] ... conservet ... [illegible] ...

... ut quicunque ... [illegible] ...

... [illegible] ...

... [illegible] ...

prole ... [illegible] ...

... [illegible] ...

... [illegible] ...

damni ... [illegible] ... damnum ... [illegible] ...

... [illegible] ... damnum ex

atque ... [illegible] ... adulter ...

[illegible] causa damni [illegible] in ista [illegible] erat [illegible] probat [illegible] actione [illegible] non est [illegible] quanto minus probat se damni causam non extitisse.

Confirmatur [illegible] nemo [illegible] tenetur [illegible] debitor. Atqui adulter in [illegible] non [illegible] debitor [illegible] non tenetur solvere [illegible] bonis suis adulter [illegible]

Prob. [illegible] argumento. Nemo tenetur [illegible] debiti [illegible] probati [illegible] probatione [illegible] obligationis [illegible] propositione min. neg. consequ. [illegible] quae [illegible] non [illegible] quomodo [illegible] crimen [illegible] ex quo [illegible] conservi [illegible] et tunc [illegible] adulteri [illegible] ut praesumitur [illegible] contra [illegible] quae aut [illegible] mariti [illegible] certo [illegible] damni [illegible] ab ipso an ab adultero [illegible] ipsa an adulter teneatur [illegible]

Objicies [illegible] si adulter [illegible] ejusdem [illegible] se credere. Atqui in dubio an proles legitima sit [illegible] praesumi legitima [illegible] matrimonii [illegible] legitimae conceptionis [illegible]

Resp. [illegible] vera [illegible] praesumptio [illegible] in favorem [illegible] adulter in [illegible] cujus crimen [illegible] proles in [illegible]

[illegible] adulter teneatur [illegible] injuria quando proles secuta non est.

Ro

[illegible] non [illegible] quae [illegible]

[illegible] quia [illegible] non [illegible] tamen [illegible] non [illegible] consistat in [illegible]

[illegible]

Utrum [illegible] mariti [illegible] renunciare [illegible]?

[illegible] non [illegible] pro [illegible]

[illegible] vel [illegible] de crimine [illegible]

[illegible] mariti [illegible]

[illegible] mariti [illegible]

[illegible]

[illegible] quae ad [illegible]

Articulus II

De injuria [illegible] famae [illegible] honoris [illegible]

[illegible]

[illegible] alicuius hominis [illegible] de altero

[illegible] opinio sive existimatio

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] ad societatem, ad scientiam, artes etc.

[illegible]

[illegible] indicium [illegible] intellectus [illegible]

[illegible]

[illegible]

[illegible]

D[illegible] [illegible]-

[illegible] de probitate alterius, vel [illegible] maiora tamen indicia requirent ad iudicandum, quod [illegible] et adhuc maiora [illegible] et plus sufficere [illegible] sufficiunt [illegible] appellatio- [illegible] attendi [illegible] probari [illegible] prudentem hominem ad [illegible] insecreto loco [illegible]

[illegible] probabilius probari [illegible] certa formare [illegible] caritatis [illegible] intentione [illegible] illo tamen [illegible] sermone quadragesimo in cant[illegible] Dici proximi magis ante [illegible] intentione [illegible] nonsunt [illegible]

[illegible] non sunt [illegible] existimandum de proximo [illegible]

[illegible]

 [illegible] non [illegible] [illegible]
[illegible] evidentia et boni viri judicio

[illegible] [illegible] [illegible]
[illegible] et alios vulgo [illegible] [illegible]. Sed ex
[illegible] alios magis electio [illegible]
[illegible]
[illegible] sicut e contrario [illegible]
[illegible]

Sed [illegible] instrumento [illegible]
p retractione [illegible]
[illegible] injusta
[illegible] retinere
[illegible] et in praesentia [illegible]
[illegible]
[illegible] aut [illegible]

Sed sive directe nocendi proposito

[illegible]
[illegible]
Qui negat aut minuit, retinet, laudatve remotè.

[illegible]
[illegible]
[illegible] aut [illegible]
[illegible]
[illegible]
[illegible]
[illegible]

[illegible] aliorum [illegible] ... [illegible]
[illegible] constantiis [illegible] ... [illegible]
simul, vel non tantia vel debeatis despiciatur [illegible] ... habet pro [illegible]
[illegible] ... deseruisse [illegible] sentiat
alii eum quod laudes, tibi indignum laude videri.

[illegible] ... bene [illegible] ...
aliud quam [illegible] potestatis, excellentia [illegible] aliquis [illegible] ...
[illegible] ... [illegible]
[illegible] ... [illegible]
[illegible] ... [illegible]
[illegible] ... excellentia [illegible] ...
[illegible] ... [illegible]
[illegible], ut sunt ingenium, doctrina, nobilitas, potestas sive ecclesiastica [illegible] ...
[illegible] ... [illegible]
[illegible] vel ut instrumentum [illegible] sicut divitiae, vel ut virtutis effectus sicut nobilitas [illegible]
[illegible] ... [illegible]
[illegible] ... [illegible]

[illegible] ... hoc [illegible] ...
[illegible] honoris injusta et exacta [illegible] sive, ut evenerit [illegible] ...
[illegible] ... [illegible]
[illegible] ... praesentia eius cuius honori derogatur; aut, si in absentia eius [illegible]
[illegible] ... [illegible] conveniat.

[illegible] ... [illegible]
[illegible] ... [illegible]
[illegible] ... proprie [illegible] contumelia [illegible] ...
[illegible] ... [illegible]
in [illegible] ... in illis praesentia [illegible] appellatur [illegible] ...

propter

 [illegible] illud de [illegible] [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] seu existimatiua [illegible] externa [illegible]

[illegible] quod honor [illegible] interna et sincera [illegible] de

[illegible] habent probitate quod sit externa [illegible] et [illegible]

[illegible]

[illegible] in corde [illegible] habet [illegible] honor [illegible]

[illegible]

[illegible] contra [illegible] [illegible]

[illegible]

[illegible]

[illegible]

[illegible] honorem [illegible]

[illegible] non [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] illatum quia scilicet [illegible]

[illegible] et [illegible] et [illegible] [illegible] grauius [illegible] rapina peior [illegible]

[illegible]

[illegible]

[illegible]

[illegible] ... [illegible] ad argumenta [illegible] ... [illegible]

§. [illegible] I

De injuriis internis contra famam proximi

[illegible] suspicione et judicio

[illegible] ... Quoniam vero [illegible] ... [illegible]

[illegible] ... judicarunt, non attendit [illegible] ...

[illegible] ... intellectus [illegible] ... et ideo [illegible] debet [illegible] ...

[illegible]

[illegible] justitia quae circa [illegible] ... [illegible]

[illegible]

[illegible] et condem[illegible]

[illegible] alterum [illegible]

re debemus in tali iudicio quod [illegible] nisi manifesta [illegible]

[illegible] extra ipsum iudicium [illegible] de aliis [illegible]

[illegible] proximum [illegible]

[illegible] quodcunque inferre absque causa cogente [illegible] si non [illegible] manifesta [illegible]

[illegible]

[illegible] contingere [illegible]

[illegible] malis [illegible]

bonam opinionem de aliquo malo [illegible]

[illegible] Potest [illegible]

[illegible] in dubio [illegible]

[illegible] a nostra principia [illegible]

[illegible] emendatio [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

quod iudicemus proximum esse improbum [illegible]

[illegible]

[illegible]

cum priuandi existimatione [illegible]

[illegible]

[illegible]

[illegible] debemus [illegible]

[illegible]

ven

sententias [illegible] nunc statuere [illegible] loco si [illegible] mus quod [illegible] ex post de eo male opinandi [illegible] tentationes [illegible] ne [illegible] [illegible] nisi [illegible] meliores partes [illegible] interpretemur. [illegible] care [illegible], [illegible] probus, neque [illegible] quod de eo prœconceptam opinione [illegible] esse. Nam proximus jus habet, non modo ne ex indiciis dubiis mala de eo concipere opiniones [illegible] ne famæ existimationes jam ante [illegible] talem [illegible]

Dicebam, ubi de cautella non agitur. Nam quando agitur [illegible] non [illegible] ut proximi [illegible] contra [illegible] [illegible] proximo [illegible] [illegible] præcautionis prudentiæ ac [illegible] proximo [illegible] injuria [illegible] amus ipsi [illegible] credimus [illegible] [illegible] exemplum [illegible] in domum tuam [illegible] [illegible] tamen [illegible] dat boni probitas

[illegible] mater dissentionum, et [illegible] ne societati [illegible] non [illegible] [illegible] proprie mortis [illegible] imaginationes [illegible] indiciorum [illegible] suspiciones temerariæ [illegible] sed [illegible] voluntatis [illegible] inordinatis [illegible] ambitionis [illegible] [illegible] ab Apostolo [illegible] ad Timotheum [illegible] inter peccata malas suspiciones recenset.

[illegible] quæ per suspiciones, [illegible] tationes temerarias [illegible]?

[illegible] sententia [illegible] communis evasit [illegible] [illegible] [illegible] sed ex errore intellectus [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] proximi [illegible] [illegible] [illegible] pro auctoritate [illegible] [illegible] [illegible] quod [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] pertinere [illegible] [illegible] [illegible] ita ut [illegible] [illegible] non apprehendit [illegible] [illegible] [illegible] humanum [illegible] [illegible] judicare [illegible] humanum [illegible] [illegible] [illegible] [illegible] in his [illegible] humanarum [illegible] [illegible] alienarum [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] tamen [illegible] sententiae continere [illegible] [illegible] Thomas [illegible] hoc [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] in genere judicii, et ideo [illegible] [illegible] non [illegible] ex genere [illegible] si fiat ex odio aut aliquando mortale.

[illegible] intellectus [illegible] habet [illegible]

sed

[illegible] morire [illegible] [illegible] rationem tamen [illegible] tale injurias [illegible] nemo [illegible].

[illegible] dubitatione, ac suppicionas, quando graviter temerarie sunt, et quando sunt [illegible] et [illegible] infamante [illegible] adversentia et [illegible] ex [illegible] ex S. Augustino, qui epistola 157. [illegible] [illegible] [illegible] [illegible] [illegible] absorbeat. [illegible] nullo [illegible] [illegible] [illegible] [illegible] [illegible] ex levissimis indiciis de [illegible] probitate suspicet, erat [illegible] graviter in [illegible]; [illegible] nullus [illegible] [illegible] [illegible] [illegible] [illegible] non [illegible] [illegible] [illegible] indicio [illegible] temeritate [illegible] [illegible].

[illegible] quando graviter temerarie sunt, [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ex contemnendis indiciis [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] temerarie sunt [illegible] [illegible] [illegible] indiciis provenientes [illegible] [illegible] [illegible] S. Thomas [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] praecaventur [illegible]

[illegible] Auctor [illegible] inadvertenti [illegible] p[illegible] [illegible] [illegible] [illegible] [illegible] in [illegible] [illegible] [illegible] imagine [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] proxime [illegible]

[illegible] in *inadvertentia* [illegible] *deliberatione* [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] deliberatione [illegible], [illegible] [illegible] interior [illegible], et [illegible] [illegible], atque [illegible] [illegible] proxime [illegible] [illegible] [illegible]. Inadvertentia vero, et [illegible] voluntatis [illegible] [illegible] [illegible] [illegible] [illegible] per actiones [illegible] [illegible] formalis, ac [illegible] [illegible] peccata sunt [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] materiae ac [illegible] [illegible] [illegible] [illegible] et [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] voluntas [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] interrogandi [illegible] [illegible] [illegible] [illegible] cogitationes [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] non peccasse [illegible] [illegible] [illegible] [illegible] [illegible] non [illegible] [illegible] [illegible] tamen [illegible] [illegible] actualis [illegible] praeoccupatio [illegible] [illegible] [illegible] [illegible] causa [illegible] [illegible] [illegible] [illegible] ejus actualis advertentiae, tunc erit [illegible] illa satis voluntaria [illegible] [illegible] [illegible]

nempe

neque in prava voluntatis effectu.

[illegible]

[illegible] ex male [illegible] [illegible] malitie [illegible]

[illegible]

[illegible] quod hoc [illegible] et [illegible] nec licet huiusmodi [illegible]

tale causam idoneam non habere, tamen vult in sua [illegible] [illegible]

legit et audit [illegible] [illegible] [illegible]

[illegible] vel excusationem audire detrectet.

[illegible] sed [illegible]

[illegible] quia maiorem [illegible] continet, quod [illegible]

[illegible] animi [illegible] [illegible] tamen [illegible]

[illegible] [illegible]

[illegible] et [illegible]

[illegible] in [illegible]

[illegible] humana [illegible] quod de multis [illegible] non [illegible] et [illegible]

[illegible] non [illegible]

[illegible] tamen est [illegible] unde [illegible]

tinus nomine suspicionis comprehendit assensum [illegible]

[illegible]

[illegible]

[illegible]

[illegible] et [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] ... constat ... [illegible] ... peccatum mortale, inquantum non ... [illegible] ... tamen ... [illegible] ... continere ... [illegible]

Lapsamus [illegible] ... existimationem aliquo modo contractam ... [illegible] ... tunc existimat ... [illegible] ... iudicium ... [illegible] ... ferre [illegible] ... temerarium ... [illegible]

Non [illegible] ... advertisset eam temerariam esse, plerumque non erit nisi ... de peccato gravi, quamvis ... [illegible] ... in his cogitationibus re- ... [illegible] ... tamen ... [illegible] ... deliberatione ... [illegible] ... tamen ... [illegible]

[illegible] non [illegible] [illegible] caveat [illegible]
[illegible] non caveat [illegible]
[illegible]
sine se accusare [illegible] tris premissis [illegible]

Conclusio

[illegible] nulla dissensio inter theologos [illegible]
[illegible] temeraria [illegible] advertentia et [illegible] gravi [illegible]

Prob. [illegible] ex divinis litteris [illegible] Matth. 7 nolite judicare ut non [illegible]
Luce [illegible] nolite judicare et non judicabimini; propterea [illegible] 4 [illegible]
[illegible] temerarie ac proinde non solum
[illegible] Prob. [illegible] Roma [illegible]
[illegible] ex hoc ipso [illegible] sine causa [illegible]
contemnit [illegible] quibus [illegible] verbis [illegible]
[illegible] temeraria [illegible] peccatum grave [illegible] et contem-
[illegible] proximi [illegible] magnocere [illegible]
[illegible] de se [illegible] temere [illegible]. Propterea [illegible]
[illegible] Ergo [illegible] gravius [illegible]
opinione [illegible] e persona [illegible]
[illegible] fundandum [illegible]
[illegible]
[illegible] bona existimatione [illegible] hujusmodi [illegible]
[illegible]

[illegible]
[illegible]
[illegible]
[illegible]
[illegible] Corinthios [illegible] de [illegible]

tentia

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] Deinde [illegible] nequeunt, gradu vero intermedio [illegible] [illegible] non attingit opiniones [illegible] [illegible] [illegible] et [illegible] [illegible] [illegible] [illegible] [illegible] nequeunt [illegible] opinio [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] iudicium temerarium [illegible] peccatum mere [illegible] certum [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] non habet [illegible] [illegible] [illegible] [illegible] crimen [illegible] [illegible] [illegible] [illegible] [illegible] iudicare [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] iudicium de personis licet [illegible] [illegible] [illegible] non tamen semper [illegible] [illegible] [illegible] temerarium. [illegible] praeterea [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] non [illegible] [illegible] [illegible] [illegible] inter [illegible] [illegible] [illegible] [illegible] non [illegible] [illegible] distantia [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] licet [illegible] non [illegible] tamen [illegible] [illegible] [illegible] [illegible] temeritas [illegible] [illegible] erit [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] materia [illegible] considerandum est tamen [illegible] materia [illegible]

[illegible] interno famae inferendi, etiam erit [illegible] sive [illegible], leve [illegible], aliud contingere, ut quod [illegible] materia [illegible] respectu [illegible]. Illud exemplis illustro; [illegible] quod [illegible] dicas [illegible] materia [illegible] dicas de [illegible] viro Religioso [illegible] magnae aestimationis [illegible] absolute [illegible], quia tamen graviter [illegible] aestimatione famae similiter [illegible] talis materia ex ingressu, [illegible] in [illegible] judicas [illegible] illud [illegible] dicas, sit [illegible] nomini, qui [illegible] et [illegible] quod non [illegible] [illegible] committere [illegible] determinata [illegible], quantum [illegible] [illegible] Religiosorum [illegible] [illegible] communitati [illegible] uno [illegible]. Si vero quis [illegible] [illegible] grave opus [illegible] [illegible] non [illegible] [illegible] contemnit [illegible] [illegible] graviter [illegible] [illegible] proximi [illegible] [illegible] circumstantiae [illegible] [illegible] infamae [illegible], aut [illegible].

Sectio II
De injuriis externis contra famam proximi, seu de detractione

 [illegible] tractionis [illegible] [illegible] [illegible] universa
lissima [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] maxi
ma maximi multitudine ex indisciplinata lingua oriri significat [illegible] [illegible]
[illegible] [illegible] [illegible] lingua [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] incendit
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] sit

[illegible]

Detractio [illegible] [illegible] [illegible] [illegible] [illegible] voluntari
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] intentione. [illegible]
[illegible] [illegible] [illegible] [illegible] contra [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] detrahit [illegible]
[illegible] [illegible] [illegible] [illegible] qui detrahit [illegible]
[illegible] [illegible] [illegible] [illegible] detrahit legi [illegible] [illegible] [illegible] primo
inter eos [illegible] [illegible] [illegible] [illegible] detractores [illegible] et [illegible]
[illegible] [illegible] [illegible] maledici [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] quae committuntur in proximum [illegible] [illegible] [illegible] nocumenta quae proximo
[illegible] [illegible] [illegible] [illegible] quanto maior [illegible] [illegible] [illegible] in detractione
[illegible] [illegible] [illegible] [illegible] pecuniae et [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] Latres [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] et se et illum qui audit demergit. [illegible] in [illegible]
[illegible] qui detrahit [illegible] Diabolus [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] fratri tuo lingua [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ad communem [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] communem nulla nobis [illegible] [illegible]
[illegible] [illegible] [illegible]

[illegible] nisi [illegible]

[illegible] Thesaurus [illegible] ita [illegible]

[illegible] directe [illegible] voluntarie [illegible]

[illegible] detractore [illegible] ita [illegible]

[illegible] detractiones [illegible]

[illegible] fama [illegible] loquendo detrahit

qui ad hoc [illegible] contentus [illegible]

[illegible] inter [illegible] fama [illegible] profitetur [illegible] impedit [illegible]

[illegible] circa [illegible]

[illegible] magna [illegible] continent tamen [illegible]

[illegible] non [illegible]

[illegible] detrahere [illegible]

[illegible] proferat

aliquis propter aliquod [illegible] circumstantiis [illegible] non [illegible]

potest [illegible] ex animo [illegible] vel [illegible]

[illegible] sit [illegible]

[illegible] homo [illegible]

genere [illegible]

[illegible] Angelici [illegible]

[illegible]

[illegible] nomine: [illegible] magis [illegible] una [illegible] mille thesauri magni et pretiosi [illegible]

[illegible] detractione [illegible]

[illegible]

[illegible] bona [illegible] fama [illegible]

[illegible] memoria [illegible] Unde [illegible]

[illegible] ergo [illegible]

[illegible]

[illegible] [illegible] [illegible] [illegible] afferit [illegible] [illegible] [illegible]
cavit severissime ab [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] hoc aute
[illegible] [illegible] mortale aut civile [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
tam morale, ac civile fama redit [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] consanguinei [illegible] [illegible] [illegible] [illegible] non [illegible] et ut
[illegible] [illegible] [illegible] [illegible] verius [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] successores tamen [illegible] [illegible] [illegible] sero [illegible] [illegible] fluit [illegible]
innumere [illegible] [illegible] [illegible] [illegible] [illegible] adhuc vivi, sive jam mortui detra-
xer, et [illegible] [illegible] non [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
re, quia remittere nequit jus defuncti, qui tamen injuste patitur.

[illegible] [illegible] in [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] nec [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] manifestet [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] correctione [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] manifestum [illegible] sufficit [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] quia [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] fama [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] non [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] et habeat [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
te [illegible] et detrimenta [illegible] [illegible] [illegible] [illegible] [illegible] tranquillitate [illegible]
[illegible] [illegible] [illegible] [illegible] non [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] expedit [illegible] [illegible] [illegible]

exceme [illegible] tion [illegible] detriment alii [illegible] veniret nulli pollit, pro ne [illegible] ejus de- tam, et crimina [illegible] hoc generale [illegible] ejet [illegible] iis patrimonij [illegible].

Quaeritur, quando [illegible] necessitatis vel [illegible] manifestatio [illegible] cri- minis sit immunis a culpa.

Resp. [illegible] posse [illegible] tenens [illegible] aut gravia tormenta [illegible] si alter ex hac [illegible] aut famae jacturam [illegible] Si vero, ut ea morte [illegible] legis crimen ex [illegible] manifestatione [illegible] impendet [illegible] [illegible] vel criminis notitia acquisita [illegible] injuria illius, qui crimen commisit, vel non sine injuria [illegible] [illegible] [illegible] [illegible] [illegible] crimen [illegible] dic [illegible] a [illegible] [illegible] ex revelatione [illegible] crimen [illegible]. Ratio [illegible] [illegible] et non [illegible] ac propagare [illegible] [illegible] etiam [illegible] causa [illegible] et [illegible] culpae [illegible] aliena [illegible] injuria [illegible] [illegible] refert, [illegible] ex propria malitia commodum referret.

[illegible] rando, [illegible] ad reparandum [illegible] [illegible] etiam injuste acquisita [illegible] [illegible] crimen [illegible] manifestare [illegible] quamvis [illegible] [illegible] ratio, quia [illegible]

[illegible] licet [illegible] notitia [illegible] contra [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] prius [illegible] [illegible] [illegible]

[illegible] hac [illegible] [illegible] existimat vel [illegible] [illegible] illud [illegible] [illegible] mihi [illegible] [illegible] [illegible] [illegible] [illegible] clausas fraudulenter [illegible] [illegible] quando [illegible] [illegible] mihi licentia [illegible] aut fraude [illegible] [illegible] [illegible] meam [illegible] [illegible] liberandi [illegible] [illegible] praefecta esse [illegible] ac proinde [illegible] ad impediendum [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] licet [illegible] [illegible] [illegible] [illegible] ipse [illegible] [illegible] aperire et non habet [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] communitati vel privatis innocentibus [illegible] [illegible] spirituale [illegible] [illegible] [illegible] [illegible] et [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] si quis vellet in mea causa [illegible] advocato in meo [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] simulator [illegible] [illegible] [illegible]
[illegible] tamen [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] damnosi.

[illegible] proximus [illegible] amicitiā et familiaritatem [illegible]
[illegible] [illegible] [illegible] et [illegible] [illegible] et ipse [illegible] [illegible]
[illegible] ad [illegible] [illegible] [illegible] multa mala [illegible] [illegible]
la Devita.

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
ac prande [illegible] [illegible] manifestari [illegible] [illegible] [illegible]
[illegible] [illegible] tamen [illegible] [illegible] [illegible] [illegible] [illegible] ordine.

[illegible] [illegible] [illegible] [illegible] [illegible] in [illegible] [illegible] [illegible]
dexteritate magnum sibi nomen [illegible] [illegible] hanc [illegible] [illegible]
in [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] quae ex errore [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] e contra [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] non [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] bona existimatione sine meritis atque ex errore [illegible]
habet [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] ex errore [illegible] [illegible] [illegible]

[illegible] [illegible] in [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] et [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] qui malum [illegible] [illegible] [illegible] non [illegible] rationabiliter [illegible]

[illegible] habet [illegible]

magni [illegible]

[illegible]

[illegible]

[illegible] ex parte [illegible]

[illegible] labat [illegible]

[illegible] manifestat: sic etiam dolor injuriæ ex manifestatione aliquantulum mitigatur, [illegible]

hæc manifestatio [illegible] ex eo [illegible]

[illegible]

[illegible]

[illegible] proximo [illegible]

[illegible] sine detrimento animi [illegible]

[illegible] valet, nempe confugiendo ad Deum [illegible] misericordiam, et Deus [illegible]

[illegible]

[illegible] quid sit [illegible] secreto et [illegible]

[illegible]

[illegible] secreti

[illegible]

[illegible] ad humanam societatem servandam secreti custodia

[illegible]

[illegible]

[illegible] contineri [illegible] arcanum, quod Scriptura [illegible]

[illegible] ius habeat, conveniens [illegible] contra

[illegible]

[illegible]

relinquatur necesse [illegible] alter, qui aut directe vel indirecte ad violandum secretum induxit

[illegible]

[illegible] aut [illegible] cas non [illegible]

[illegible] literati [illegible]

[illegible] aut [illegible] aut [illegible] aut materia [illegible] nullis

secreto [illegible] aut [illegible] aut [illegible] aut [illegible]

[illegible] mittit [illegible] tunc

[illegible] aut [illegible]

[illegible]

[illegible] aut [illegible] atq id expedire judicaverint salu-

ti [illegible]

[illegible]

[illegible] tamen [illegible]

[illegible] licita [illegible]

[illegible] aut [illegible]

[illegible]

Resp. [illegible] sacramentale de quo nos [illegible], et praeter se

[illegible], quod [illegible] ut [illegible]

[illegible] secreta [illegible]

[illegible] ut [illegible] mihi [illegible]

[illegible] ego [illegible] secreta [illegible]

[illegible] mihi [illegible] et ego [illegible]

se commisit [illegible] mihi [illegible] tacendi [illegible] et eas [illegible]

[illegible]

[illegible] sub lege silentii [illegible] mihi committere [illegible]

[illegible] non exprimat [illegible]

[illegible] medici [illegible] ad eas consilii remedii [illegible]

[illegible]

aut [illegible] non [illegible] persona [illegible]

 [illegible] ... [illegible]
[illegible]

At secreto [illegible] ... [illegible]

[illegible] ... secretus [illegible] ... [illegible]
tia.

[illegible] ... [illegible]

non tenebatur [illegible] si [illegible] promisit tacere. Ex [illegible] qui novit [illegible] [illegible] Deus, debet illud aperire [illegible] legitime interrogatus. Et si [illegible] [illegible] secretum, non [illegible] hac obligatione [illegible].

Deinde [illegible] commissi et promissi [illegible] [illegible] [illegible] [illegible] [illegible] committen[illegible] [illegible] [illegible] secreti subeat [illegible] [illegible] tacita conventione, ut alter gravi [illegible] obligationem contrahat [illegible] [illegible] legem [illegible] violat et omnia damna inde [illegible] res-titutioni obnoxius evadit.

Quibus tamen in casu potest quis secretum sibi commissum absque culpa detegere. Primo si res secreta nullatenus meretur [illegible] alicui [illegible] prodesse aut nocere potest. Legitimus tamen judex qualitatis rei custodiendae [illegible] [illegible] [illegible] qui commisit [illegible] secretum [illegible] [illegible] reconditas habere, ob quas [illegible] [illegible] manifestatio eius secreti [illegible] non [illegible] [illegible] [illegible] [illegible] [illegible] quia [illegible] [illegible] materiae [illegible] [illegible] [illegible] gravi obligatione [illegible] [illegible] commisi ac promisi [illegible] [illegible] judex [illegible] [illegible] [illegible] aut [illegible] [illegible] materia [illegible]

[illegible] [illegible] secretum [illegible] in [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] alterius [illegible] [illegible] [illegible] [illegible] alia [illegible] defendendi non [illegible] [illegible] [illegible] [illegible] [illegible] pro eo [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] indirecte, et [illegible] [illegible] non [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] secreti debere

[illegible] secreti [illegible] spirituali [illegible] meriti, et ad peccatum vitandum.

Demum si adest justa causa [illegible] illud, grauissime periclitetur honor, fama, vel [illegible] prudentis arbitrio estimandum est [illegible] secretum concredidit tantam obligationem reticendi [illegible] tenet commodum eius etiam cui secretum concredidit.

[illegible]

Praeterea [illegible] me interest tibi non commisisset nisi cum tali obligatione [illegible] rationalis [illegible] ex lege [illegible]

taxis minus damnum [illegible] sustinere debet.

[illegible] [illegible] in [illegible] quae [illegible] secreti [illegible] [illegible] quia notitia quam habes, ita limitata atque [illegible] qui secreti [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] sicut [illegible] [illegible] [illegible] [illegible] non [illegible] sed etiam [illegible] servare fidem et de jure [illegible]. [illegible] quae [illegible] to commisso [illegible] conformia sunt doctrinae Angelici [illegible] [illegible] [illegible]

[illegible] ex doctrina eiusdem S. Thomae, huius sectionis [illegible] [illegible] ex animi [illegible] [illegible] [illegible] [illegible] [illegible] sit adeo grave, quod notabiliter famam alicuius laedat, et [illegible] [illegible] quae pertinent ad honestatem vitae. [illegible] itaque videndum est quando [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] fama non [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] tovi [illegible] [illegible]

[illegible] [illegible] [illegible] defectu [illegible] quia non [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] vacirant [illegible] [illegible] [illegible]
[illegible] que [illegible]
[illegible] ut sibi invicem dicerent, bis aut ter in mensibus, semel atque iterum [illegible]
[illegible] colloquutus, quia non ideo [illegible] amitterent.

[illegible] quamvis [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible] aut [illegible] [illegible]
[illegible] si animo inde graviter [illegible] aut [illegible] servata alteri
[illegible] ac graviter [illegible] sit ideo [illegible] carnalium [illegible]
[illegible] frequenter [illegible] aut [illegible] ex [illegible] honestu [illegible]
[illegible] molestè ferre [illegible]
[illegible] in animo [illegible] et propterea cavendum [illegible]
[illegible] in [illegible] atque ideo infames [illegible]

[illegible] mortale [illegible] naturam [illegible]
[illegible] ex hoc [illegible]
[illegible] notabili [illegible] pro [illegible]

[illegible] mortale [illegible] non [illegible]
[illegible] quando [illegible]
[illegible] quamvis [illegible] non [illegible] ex [illegible]
[illegible] tamen [illegible] simplices
[illegible]
[illegible] etc.

[illegible] mortalium [illegible] in genere mortali sit, an quando
[illegible] mortalis [illegible] non [illegible]
[illegible] aut alia mortis [illegible]
[illegible] [illegible] revelata et ipse de ea se [illegible]
[illegible] His revelatis, [illegible]

Quare

Quæres nunc primo, utrum sit mortale peccatum generatim sive tales dicere superbum, avarum, iracundum, presumptuosum, atque id genus similia

Resp. cum distinctione [illegible] vocabulis sed mortalia, qua [illegible] fiat, qui probabiliter existimari possint [illegible] mortale [illegible] hujusmodi [illegible] autem [illegible] magna [illegible] sona, que prius magno in honore habebatur. Secus vero [illegible] commititur [illegible] aut sine admonitione [illegible] ordinario accipi [illegible]

[illegible] utrum qui [illegible] ingerere dicat. de tali hoie aliquid [illegible] superbe [illegible] et [illegible] eterno [illegible] sane [illegible]

Resp. [illegible] intelligant, vel suspicant, quod forte [illegible]

Quæres 3tio an et qualiter peccet, qui omittit aliquid [illegible]

[illegible] in iis circumstantiis, in quibus [illegible] superbiam [illegible] nisi tamen ingerendi. Si vero tamen, [illegible] periculo adesse. nam [illegible] experientia [illegible] hoies in ma[illegible] male [illegible] proxima [illegible] et [illegible] his narrationibus [illegible] aliquo in [illegible]

 [illegible] aut [illegible] bene [illegible] et [illegible]. Praeterea cum prima crescat [illegible] [illegible] tamen [illegible] poenis [illegible]

Resp. esse peccatum mortaliter contra justitiam [illegible] [illegible] restitutionis [illegible] [illegible] causa ejus [illegible] [illegible] et [illegible] peccavit contra [illegible] restitutionis incurrerit [illegible] [illegible] meritis [illegible] non minus efficaciter [illegible]

Resp. [illegible] contra [illegible] sed etiam contra justitiam, qui grave crimen, ut audiatur [illegible] in iis circumstantiis, in quibus [illegible] non [illegible] [illegible] caritate [illegible] ex quibus [illegible] [illegible] restituenda [illegible]

[illegible] justitia, qui [illegible] alle

altero crimine infamat de aliis

Post infamiam de uno crimine non posse citra gravem injuriam infamari [illegible] aliis [illegible] crimina [illegible] sint [illegible] [illegible] sint diversi generis [illegible] secundum crimen sit valde affine et intimate conjunctum cum graviore, quod jam publicum non erit [illegible] salte [illegible] hoc secundum delictum iis deferre qui principale noverunt [illegible] [illegible] communis, cujus prima pars sic [illegible]. Qui est infamis in uno genere [illegible] non illico est infamis in aliis. potest enim quis haberi ebriosus, et [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] sicut diversarum virtutum [illegible] [illegible] [illegible] [illegible] diversa infamia. atque alia quidem major, alia minor [illegible] [illegible] [illegible] [illegible] [illegible] qui tamen maxime [illegible] infamiam perjurii. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] partibus. [illegible] una sicut non [illegible] ullo modo ab alia [illegible] [illegible] [illegible] [illegible] [illegible] famam parvam possident. Quemadmodum ergo [illegible] [illegible] [illegible] non amisit [illegible] in aliis. Ita qui amisit famam [illegible] virtute non illico amittit etiam famam, quam in aliis [illegible] [illegible] [illegible] [illegible] ex una [illegible] [illegible], licet non [illegible].

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] perpetuo [illegible] [illegible] [illegible] [illegible] [illegible] notabiliter [illegible]. Sed [illegible] crimina [illegible] sint species, tamen [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] infamia [illegible] gravis injuria [illegible] in illo delicto [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] quandoque [illegible] aut [illegible] famae detrimentum adjungit. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] non esse [illegible] [illegible] [illegible] se [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] litteras amatorias, [illegible] munera [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] ... crimen [illegible] ... Sed vere
[illegible] ... [illegible]
[illegible] ... criminis ... [illegible]
qui de [illegible] dicit, eius [illegible] contra [illegible] ... illi narrat, qui [illegible] ... [illegible]
[illegible] ... qui de [illegible] in occulto [illegible].

Quaeres 3º an et quatenus ... et qui crimen [illegible] in uno loco narrat in alio ... vel in [illegible] aliis crimen ignorantibus manifestat.

Respondeo [illegible] primo [illegible] ... publicum aut notorium esse ... [illegible] ... publicum dicitur ... [illegible] ... sententia vel de quo ante sententiam ... reus ... in iudicio aut [illegible] reus hoc crimen confessus ... [illegible] ... in iudicio vel in iudicio ... [illegible] ... notorium ... iuris publico ... [illegible] illud [illegible] ... maiori parti ... oculos [illegible] ... tam ... [illegible] ... evidentia indiciorum ... [illegible] ... [illegible] ... ubi quis publice [illegible] ... [illegible] ... [illegible] ... quod etiam [illegible] ... [illegible] ... ad maiorem partem communitatis vel ad [illegible] eiusdem communitatis [illegible] ... [illegible] ... [illegible] maiori parti communitatis ... [illegible] ... [illegible].

2º notandum ... crimen ... maiori parti ... communitatis ... [illegible] ... [illegible] ... communitate ... [illegible] ... [illegible] ... communitatis ... [illegible] ... [illegible] ... [illegible] ... communitatis ... [illegible]

[illegible] doctrina placet, [illegible] ex [illegible] circumstantiis [illegible] co[illegible] factis [illegible] cognoscere certum [illegible] quibus crimen cognitum [illegible] [illegible] [illegible] nec [illegible] criminis notitia [illegible] ut [illegible] magna necessitate [illegible] cohibere nominum in aliorum conspirantium cognitionem devenerit. Distinguendum [illegible] inter locum [illegible] et [illegible] [illegible] ter coincidi [illegible] unum crimen cognovisse, aut de eo sermo[illegible] [illegible] et [illegible] concedat [illegible] narratores [illegible] ut octo cognitione criminis [illegible] si certe [illegible] dixisse satis erit [illegible] domos [illegible] sufficit [illegible] aut [illegible] domum [illegible] vagere si [illegible] [illegible] dat satis [illegible] octuaginta [illegible] crimen a[illegible] [illegible]. Nota [illegible], nam ex doctrina, quae teste Laymann communis est, si crimen [illegible] [illegible] sit [illegible] loci in [illegible] criminis [illegible] [illegible] sit, [illegible] ingens [illegible] peccari, si [illegible] infamia criminis ad ea loca brevi perventura existimet.

[illegible] habenda [illegible] primo [illegible] iudices [illegible]. Illa si doceat aut [illegible] de commun[illegible] men [illegible] illi [illegible] [illegible] [illegible] [illegible] facile [illegible] crimen [illegible], si homines illi leves sint, ac loquaces. [illegible]

[illegible] crimen [illegible] testium [illegible] in iudicio [illegible] sententia [illegible] crimen [illegible] in sententia [illegible] [illegible] esse [illegible].

[illegible] crimen [illegible] solum in ordine ad [illegible], ut [illegible] [illegible]

[illegible] de censu [illegible] ergo [illegible] in [illegible] tamen ad [illegible] cadit de [illegible] aut [illegible] aut tertium [illegible] lenti [illegible] ad poenam [illegible] de [illegible] qui crimen [illegible]

Iniuria tamen [illegible] non [illegible] contingere [illegible] in loco non crimen [illegible] paullo [illegible] crimen [illegible] Quod tamen [illegible] intelligere [illegible] non [illegible] peccat mortaliter contra iustitiam et [illegible] compensare damna, sicut is qui [illegible] propter [illegible] ita qui [illegible] iniuria [illegible] obligationem [illegible] nota [illegible]

Imo non modo [illegible] iniuria [illegible] verum etiam [illegible] de quo [illegible] contra [illegible] se [illegible] non [illegible] crimen [illegible] defamatione [illegible] in [illegible] infamatio [illegible] ignorantia [illegible] crimen [illegible] tamen [illegible] nota [illegible] ad extendendam diffamationem.

Quando vero [illegible] tamen [illegible] [illegible]

[illegible] vero sunt [illegible] [illegible] contrarias [illegible] manifestatis e contra iustitia [illegible] [illegible] nullum [illegible] in [illegible] [illegible] proximus [illegible] [illegible] iniuriae [illegible] [illegible] [illegible] tribuunt, ius [illegible] proximo confert, prius quam tribuit ius absolutum et universale [illegible] [illegible] utroque autem titulo sublato [illegible] [illegible] [illegible] ius quod alii habent ad qualitates [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] manifestatione [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] publicum [illegible].

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ceteris exemplo ac terrori sit ergo [illegible] sententia executioni mandata et [illegible] [illegible] [illegible] [illegible] [illegible] publicationem [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] crimen [illegible] ob hanc causam [illegible] solent [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] qualis e sententia [illegible] in aliquo [illegible], aut monasterio tunc [illegible]

e contra [illegible] extra [illegible] [illegible].

Sed [illegible] [illegible] contra [illegible] crimen alicubi [illegible] [illegible] praesentiam [illegible] [illegible] [illegible] [illegible] eo in loco, quo fama non erat [illegible] personam et Auctor criminis erat, [illegible] existimatione. [illegible] [illegible] et [illegible] [illegible] [illegible] peccatum [illegible] contra [illegible] [illegible] publica praesentia [illegible] [illegible] in loco [illegible] [illegible] [illegible] [illegible] erat [illegible], [illegible] contra [illegible] [illegible] quod vetabat, ne quis alteri [illegible] quod sibi [illegible] nollet. Quis autem [illegible] [illegible] fama [illegible] [illegible] sed [illegible] sine dolo et fraude non modo [illegible] sed etiam [illegible]. [illegible] tamen [illegible] adversus [illegible] etiam in [illegible] alio loco [illegible] sive per iudices sive [illegible] fama [illegible], qui [illegible] criminis [illegible] graviter non [illegible] si [illegible] [illegible], sive [illegible] [illegible] fama [illegible] [illegible] [illegible] ex [illegible] [illegible] [illegible] [illegible] continuat in [illegible]

Sed [illegible] [illegible] [illegible] [illegible] [illegible] nec [illegible] [illegible] contra [illegible]. Quis [illegible] contra caritatem [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] sibi legitime concessa [illegible] [illegible]

[illegible]

maxime [illegible] peccato [illegible] non [illegible] [illegible] [illegible] crimina et [illegible] [illegible] [illegible]

[illegible]

[illegible]

[illegible] conservandi [illegible] bona existimatione [illegible] alicuius [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] communem utilitatem [illegible] [illegible] hæc utilitas [illegible] eius [illegible], non [illegible]

[illegible] ejus jus est debet [illegible] convertire; ex his habes quid respondeas argumentis [illegible] tentiæ Hackeny de arbitrio [illegible] etc.

[illegible] non esse contra justitiam, crimen [illegible] aut [illegible] notum in [illegible] [illegible] [illegible] quibus [illegible] eus [illegible] hoc ipso quod crimen in [illegible] conspectu commisit [illegible] indicia per quæ crimen [illegible] [illegible] illo loco [illegible] quod habebat ad [illegible] [illegible] [illegible]. Hæc communis sententia [illegible] tam revelationem non esse peccatum saltem grave contra caritatem, [illegible] [illegible] non [illegible] [illegible] [illegible] infamatione [illegible] [illegible] [illegible] in [illegible] crimen [illegible] [illegible] [illegible] [illegible] [illegible].

[illegible] concedunt præterea [illegible] [illegible] [illegible] [illegible] [illegible] infamatum esse in locis [illegible] infamari, ad quæ [illegible] [illegible] [illegible] et [illegible] [illegible] [illegible] [illegible] peccavit, verum etiam in locis [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]. Ita in hoc etiam casu [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] et [illegible] [illegible] [illegible] et extraneis [illegible], neque [illegible] [illegible].

Non est tamen negandum in [illegible] leve peccatum contra [illegible] [illegible] ex animi levitate aut nimia loquacitate de crimine occulto [illegible] [illegible] etiam [illegible] locutio, atque adeo [illegible] [illegible] et [illegible] [illegible], [illegible] [illegible] [illegible] [illegible] manifestat. Quod si [illegible] ex hujus modi [illegible] [illegible]

[illegible]

[illegible] in [illegible]

beneficium, quod aliis sibi conferre decreverat.

Sed crimen publicum sola publicitate facti vel famae, licetne ad quemque, loca cedere, ubi fama illud nesciatur [illegible]?

Resp. [illegible] non solum contra [illegible] scelere [illegible], sed etiam contra justitiam, quod impugnant plures [illegible] hanc [illegible] contra [illegible] propositum. Prob. illud e contra justitiam [illegible] cedat crimen in casu proposito, in alterius [illegible]. Licet enim qui publice peccat, cedat infamiae [illegible] vicinitatis, non tamen cedit in locis valde dissitis. Nec enim censet [illegible] [illegible] fama moraliter loquendo crimen illud [illegible] moraliter [illegible] hac [illegible] fama [illegible] se [illegible] non [illegible] persona [illegible] in urbe [illegible], unde licet citra injustitiam in ipsa [illegible] moraliter [illegible] Denique [illegible] misso crimine ubi ibi etiam [illegible] et semper vel infamis vel exul vivere cogatur?

[illegible] aut Provinciae [illegible] vix carcere [illegible] a criminibus deterreantur. Attamen non multo ad bonum commune [illegible] sunt, litteris consignari valeant [illegible] ad veritatem [illegible] pertinent. Tamen crimen, et criminosi referendi non sunt, quae [illegible] crimina [illegible], sunt ex tali narratione [illegible] malo animo [illegible]

a et Arbitrii [illegible] indicandi [illegible]

Quid si diffamatus tacite vivendo [illegible] fama?

[illegible] contra caritatem et contra justitiam [illegible]

[illegible]

[illegible]

ratio: ita contrariis bonis moribus infamia facti abstergitur et bona existimatio recuperatur. Unde

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] fama [illegible] sententia juste eum infamaverit.

[illegible]

[illegible]

[illegible] non facit ibi injuria

[illegible]

[illegible]

[illegible]

[illegible]

vivat in memoria aut notitia hominum?

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

191. b non [illegible] famā [illegible] [illegible] [illegible] [illegible] [illegible] sua gravitas [illegible]

notitia [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] a tollat.

Quaeres tertio. [illegible] [illegible] crimen uni tantum [illegible] [illegible] [illegible] [illegible] [illegible]

patere. 31

[illegible] cum sententia, quae communis [illegible] [illegible] volentes id esse lici-

tum si revelatio sub secreto [illegible] honesto [illegible] [illegible] qui [illegible] non revelabunt. Quod hujusmodi de-

[illegible] [illegible] conceptis verbis [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] in [illegible] [illegible] [illegible] [illegible] famae in anima viri probi, [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] infamia [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] honestas [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

praeferendus [illegible] [illegible] [illegible] [illegible] Joannes Chrysostomus homilia [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] audientis et [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] non [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] et [illegible]

[illegible] et [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] in [illegible] [illegible] et [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] et [illegible]

et [illegible] inimicitias [illegible] quae [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible]

erit [illegible] libellos [illegible] libelli famosi [illegible] in [illegible]
[illegible] signa [illegible] [illegible] seu scripta [illegible] publica, et [illegible]
[illegible] libellorum seu cedulas de [illegible] libelli famosi nomine venit
etiam [illegible] [illegible] [illegible] et [illegible]
[illegible] [illegible] majore ceteris partibus, quae [illegible] conmittit
[illegible] et non modo [illegible]
[illegible] [illegible] [illegible] inter [illegible]
[illegible] poena et [illegible] et [illegible] [illegible] libelli
famosi [illegible] [illegible] [illegible] etiam [illegible]
[illegible] contra [illegible] et
non [illegible] libellos famosos et [illegible] [illegible] poenis [illegible]
constitutionibus Pii V et [illegible] XIII qui contra [illegible] libellos famosos
[illegible] IV. excommunication
tullit etiam contra eos, qui adversus [illegible] et [illegible] libellos [illegible]
[illegible]

[illegible] libelli famosi maliti [illegible] [illegible] [illegible]
[illegible] amicitiam et seminare inter fratres discordia [illegible]
[illegible] a detractione [illegible] [illegible] art. [illegible]
bis: [illegible] et detractor in materia conveniunt, et etiam in forma, sive in modo loquen
[illegible] proximo [illegible] [illegible] [illegible]
[illegible] intendit denigrare famam proximi, [illegible] amicitia separare, [illegible]
[illegible] [illegible] conveniunt [illegible]
[illegible] contra [illegible]
[illegible] secundum illud [illegible] et [illegible]
[illegible] amicitia [illegible]
[illegible] et [illegible] parte amicitia [illegible]. Et ideo [illegible]
[illegible] Detractor, [illegible]

32[illegible] [illegible] et [illegible] [illegible] melior [illegible] [illegible] [illegible] habentes.

inter cetera vero externa bona praeminet amicus [illegible] [illegible] [illegible] [illegible] test [illegible] [illegible] Eccles. 6. Amicus fidelis protectio fortis: qui invenit illum invenit [illegible] [illegible] invenit [illegible]. Amico fideli [illegible] [illegible] comparatio [illegible] [illegible] [illegible] [illegible] tractione [illegible] [illegible] hoc maxime necessaria est, ut homo idoneus ad amicitiam [illegible]. Et [illegible] susurratio est maius peccatum quam detractio, et etiam quam contumelia; quia amicus est melior quam honor, et amari, quam honorari.

Ex his evidenter [illegible] susurratione de peccatis [illegible] et [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] honum et sextum [illegible] anima eius [illegible] qui seminat inter fratres discordias [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] amicitia et [illegible] amicitiam [illegible] illo, licet restaurata sine animo eam dissolvendi; [illegible] [illegible] [illegible] [illegible] [illegible] amicitia [illegible] [illegible] [illegible].

[illegible] [illegible] amicitiam dissolvere non ut inimici fiant [illegible] ut [illegible] amici [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] familiares [illegible] amicitia [illegible] [illegible] [illegible].

[illegible]

[illegible] contra Sempronium [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] Sempronius [illegible] [illegible] [illegible] [illegible] [illegible]
vult relinquere Sempronio pro testamento sibi [illegible] [illegible] [illegible] [illegible] [illegible] iustitiam [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] transferri [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] odio et [illegible]

[illegible] detractione [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
non [illegible] detractionem [illegible] [illegible] [illegible] detrahere [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] detrahentes audirent [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] detractionem [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
inducit alium ad peccatum vel ei placet peccatum alius [illegible] [illegible], quando scilicet non resistit, cum
resistere posset et hoc contingit [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
timorem. Dicendum est ergo, quod si aliquis detractiones audiat absque resistentia, videtur detractori conse-
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] vel ex timore, vel negligentia vel etiam verecundia quadam [illegible] [illegible]
[illegible] detrahentes [illegible] [illegible] [illegible] detrahens et plerumque venialiter. Quandoque [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] detractione inducit vel ad eandem conti-

342 [illegible] verbis [illegible]

[illegible] non [illegible]

[illegible] peccare [illegible] contra caritate[m] [illegible] contra iustitia[m] [illegible] auditor [illegible] ad peccandu[m] [illegible] caritati [illegible] detractione[m] [illegible] partes [illegible] detrahens [illegible] talis auditor [illegible] reparare debet in [illegible]

Qui [illegible] exteriori [illegible] retractare [illegible] interiori [illegible] detrahentes [illegible] ex auditis sibi complacet.

[illegible] contra caritate[m] [illegible] damno [illegible] contra [illegible] detractione [illegible] de detractionibus [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] aut [illegible] cognitione [illegible] proximi. Sed [illegible] in [illegible] ipsa cognitio [illegible]

[illegible]

Quaeritur, an teneatur auditor [illegible] qui nec [illegible] nec [illegible] ex curiositate audit sed mutus manet, nec impedit, quando [illegible]

[illegible]

[illegible] de [illegible] auditore [illegible] caritatis, cum [illegible] caritas [illegible]

[illegible]

[illegible]

[illegible]

[illegible] adjunctis [illegible] tunc quando [illegible] auditor qui tenet [illegible]

[illegible] aggravet, aut confirmet [illegible]

[illegible]

[illegible]

[illegible] certe [illegible] inficit [illegible]
[illegible] et sacies [illegible] lingua detrahentes.

[illegible] de auditore [illegible]
[illegible] detractore [illegible] et [illegible]
[illegible] ex correctione [illegible] secat [illegible]
[illegible] tamen [illegible]
[illegible] graviter [illegible]
[illegible] non audeat [illegible]
[illegible]
[illegible]
detractor magnae auctoritatis [illegible]
[illegible] detractor [illegible]
[illegible]
[illegible] et odii [illegible]
[illegible]
[illegible] et [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]

[illegible]

[illegible] non coercet [illegible] detrahentes alterius [illegible]
[illegible] et [illegible]
[illegible]
[illegible]

[illegible]

[illegible] et gravius [illegible]

[illegible] necessitate non semper [illegible] ad [illegible]

[illegible] injuriæ [illegible] communiter [illegible]

[illegible]

[illegible] posset [illegible] recurrere [illegible]

[illegible] retractandum, vel ad probandum [illegible]

[illegible]

constitutum non [illegible] ad injuriæ [illegible] manifestatione veri [illegible]

[illegible]

[illegible]

Resp. [illegible] cum Lessio, [illegible], Lugo et aliis, superiore [illegible] tunc peccare contra

[illegible]

[illegible]

[illegible] peccati [illegible] ne [illegible]

[illegible] superiorem [illegible] tenetur [illegible]

[illegible] ne perseverent in injuria alteri inferenda [illegible]

[illegible] qui famam [illegible] non restituit [illegible]

[illegible] restitutionem [illegible]

[illegible]

[illegible] seu ne [illegible] damnum [illegible]

[illegible]

[illegible] non [illegible]

[illegible]

[illegible]

[illegible] non pertinent.

[illegible]

 [illegible]

[illegible] causa [illegible]

[illegible] absolvant.

Queres itaque primo quinam sint obnoxii reparandae famae

[illegible] qui sine peccato famam proximi laesit, ut qui per ignorantiam [illegible] inadvertentiam,

[illegible]

[illegible] a actione [illegible] damnum [illegible]

[illegible] a mala opinione, quam injecit [illegible]

[illegible] alienam famam [illegible]

[illegible] intellexit [illegible]

[illegible]

[illegible] opinione [illegible] non [illegible].

[illegible] fuerunt in non restituendae famae, [illegible] damni alicuius infamato [illegible]

[illegible] detractor ad illum [illegible] tenetur [illegible] causa damni [illegible]

[illegible]

[illegible]

[illegible] [illegible] [illegible] [illegible] et damno [illegible] [illegible] [illegible] damni [illegible] [illegible] possit [illegible] [illegible] famae proximi [illegible], non vero de iis, quae acciderunt antea.

Resp. [illegible] ad restitutionem ex iustitia tenen[illegible] hanc malam intelligentiam [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] causa [illegible] [illegible] [illegible] damnum [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] tamen [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] damna [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] quae [illegible] [illegible] [illegible] [illegible] actione [illegible] [illegible] [illegible] iusta causa [illegible].

Resp. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ipsi [illegible] [illegible] [illegible] [illegible] [illegible] et non [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] contra [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] nemo [illegible]

[illegible] [illegible] quomodo, et quando [illegible] restitui debeat.

Resp. primo [illegible] non potest

[illegible] et [illegible] [illegible] [illegible] [illegible] [illegible] se [illegible] fuisse mentitum. Quod si pro [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] debet pro eadem restituenda [illegible], [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], [illegible] [illegible] [illegible] facere debet, quod pro [illegible] [illegible] [illegible]

[illegible] juramento [illegible] tamen [illegible] [illegible] ex [illegible] tenet ex [illegible] [illegible] restitutio [illegible]

Quaenam [illegible] tamen [illegible] infamatori [illegible] [illegible] quod tamen [illegible] famam [illegible] mentiri [illegible]. Quamvis enim [illegible] teneatur [illegible] famae [illegible] quam tenetur [illegible] reperit [illegible] fama [illegible] apud se [illegible] [illegible] irreparabiliter [illegible] famam [illegible] reparare nisi [illegible] infamare [illegible] etiam [illegible] teneatur ex justitia [illegible] quando [illegible] melior est [illegible] innocentis [illegible], quando non potest quis rem injuste ablatam restituere [illegible] impensis, ad illas etiam ex justitia tenetur, ut suo loco supra docuimus.

Non tamen [illegible] teneatur [illegible] restituere [illegible] crimen [illegible] ita [illegible] auctoritati [illegible] famam [illegible] ad famam [illegible] [illegible] aliud exigat.

[illegible]

[illegible] tenius contra ordinem [illegible] teneri ad restitutionem [illegible] [illegible] tamen, ut palam praedicat se male dixisse [illegible] iniuste [illegible] loco proxima citato. [illegible] [illegible] [illegible] non [illegible] [illegible] xisse dicat, quia non debet alterius famam [illegible] [illegible] [illegible] [illegible] in aliis inspectis comperi me [illegible] [illegible] [illegible] [illegible] [illegible] sunt [illegible] [illegible] neque sunt [illegible] mala [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] amphibologia, et infamatio ipsa [illegible] [illegible]

[illegible] detractor dicat: [illegible] [illegible] me contempsit [illegible] quando fama restituenda [illegible] apud homines, qui [illegible] et simpliciores sunt [illegible] [illegible] [illegible] [illegible] [illegible] tationis [illegible] [illegible] in [illegible] commissi criminis. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] et [illegible] [illegible] [illegible] et admiratione [illegible] in [illegible] [illegible] [illegible] [illegible] [illegible] in [illegible] acquirat et [illegible]

[illegible] [illegible] videatur [illegible] [illegible] [illegible] tamen sua difficultate non caret [illegible]

[illegible]

[illegible] restituat damna restitutioni quando potest, et contritio efficax non suppetat [illegible] [illegible]

[illegible] non merito.

[illegible]

[illegible] merit. unde ab [illegible] auctoribus [illegible], an aliis crimen [illegible]

[illegible]

[illegible] et [illegible] quia habet et [illegible] prudentes [illegible]

[illegible] prudenter potest, [illegible] auditor non [illegible]

[illegible] ad integram [illegible]

[illegible] imponere poenitent [illegible] quod auditores [illegible] eos [illegible] et ipsi [illegible]

[illegible]

[illegible] Basilicatis [illegible] quod [illegible]

[illegible] [illegible]

[illegible] [illegible]

[illegible] [illegible]

Secundo [illegible] sicut ille qui [illegible] [illegible]

[illegible] [illegible] debito [illegible] hic debet [illegible]

[illegible] [illegible]

[illegible] [illegible] plurimos [illegible]

[illegible] voluntarie [illegible] totius damni

[illegible] [illegible] nemo teneat [illegible] tamen

[illegible] [illegible]

[illegible] [illegible]

[illegible] [illegible]

[illegible] [illegible]

[illegible] [illegible] restitutionis [illegible]

[illegible] [illegible] restitution [illegible]

[illegible] [illegible]

[illegible] antea [illegible] in infamia [illegible]

Respondeo [illegible] [illegible]

[illegible] occultus [illegible] teneri ex [illegible] alia damna [illegible]

[illegible] [illegible]

[illegible] [illegible]

damni [illegible] damnum [illegible]

[illegible] [illegible]

[illegible] [illegible]

[illegible] [illegible]

[illegible] integra [illegible] damnorum [illegible]

[illegible] [illegible] [illegible]

[illegible] ... [illegible] signis ignis occultus [illegible]

[illegible] [illegible] [illegible]

[illegible] ad infamatorem restitui honore integrum valore officii vel talis [illegible]. Si vero [illegible]

[illegible] aut [illegible] amittat [illegible] magistratus

[illegible]. Item [illegible] non habent medicos infirmos curandos mercator emptores [illegible] vel

[illegible] [illegible]

tes plus vel minus, prout maior vel minor erat boni illius consequendi fiducia. Hec vero

[illegible]

Queres [illegible] quenam causae excusent a restitutione famae

[illegible] [illegible] a debito restituen-

di famam [illegible]

[illegible] [illegible]

[illegible]

[illegible] in illa materia diffamatus, nulla enim urgeret necessitas restituendi [illegible]

[illegible] dixit aut si audiens

est inducit ad iudicandum male de proximo [illegible]

[illegible]

[illegible]

Excusat primo impotentia tum physica [illegible] [illegible] in [illegible] [illegible]

[illegible]

[illegible] preponderet damnum [illegible] nec tenetur tunc non enim rationabiliter invitus

[illegible] [illegible]

[illegible] fama [illegible] inferioris ordinis [illegible] communiter [illegible]

[illegible] sunt remansura ex quando in detrimento eorum [illegible]
et damnum famæ longe [illegible] quæ [illegible]
[illegible] tunc etiam restitutionem [illegible] non est [illegible]
tamen ex calumnia [illegible] damnum [illegible]
[illegible]
damno æquivalent aut etiam prævalent damno [illegible]
[illegible] tanti [illegible] tanti [illegible]
[illegible] proportione [illegible] damnum [illegible]
[illegible] aut etiam multo majore cum proprio detrimento [illegible]
[illegible] restituere cum jactura [illegible]
[illegible] fama [illegible] ex injuria [illegible] fama [illegible]
[illegible] communi [illegible]

[illegible] crimen [illegible]
[illegible] restitutione [illegible]
[illegible] ad famam et ad ejus restitutionem [illegible]
[illegible] restitutioni [illegible]
[illegible]
[illegible] crimen [illegible] justa [illegible]
[illegible] sententiam [illegible]
fama [illegible]
[illegible] restitutioni [illegible] damni [illegible]
[illegible]
[illegible] tempore [illegible]
[illegible]
[illegible]
[illegible]
[illegible] quia crimen [illegible]

[illegible] frequentius evenit in bonis [illegible] proximo [illegible]
sit calumniatoris et maledici hoc [illegible] reparare.

[illegible] quia res quae in opinione [illegible] eodem modo se habent apud [illegible] solicite [illegible]
memoria [illegible] refricare et vulnus jam clausum iterum aperire. Hunc vero in-
famia [illegible] diffamatu[illegible] [illegible] auditorum [illegible] persuasione [illegible] debet. [illegible] honorifice sociam [illegible] cujus [illegible] conversatione omnes [illegible]
soleat.

[illegible] tamen [illegible] infamia, quod [illegible] per [illegible] monte auditorum [illegible] restitutione [illegible]
si credat potius offutura quam profutura, [illegible] si ex restitutione nulla [illegible] [illegible]

[illegible] infamia [illegible] ut [illegible] restitui [illegible] proximo [illegible]

[illegible] vel ad evitandum scandalum [illegible] [illegible] [illegible] non potest sine [illegible] administratione [illegible] contra [illegible] [illegible] fama [illegible] [illegible]

[illegible] vero [illegible] ordinatio, quo [illegible] [illegible] redundat in alios qui inde manent [illegible] [illegible]. [illegible] [illegible] possit quis [illegible] cedere alioru[m] tamen [illegible] renunciare nec debet nec potest [illegible] ille qui in hac [illegible] [illegible] [illegible] [illegible] aliorum famam disponit, et simul renunciat [illegible] [illegible] [illegible] ne sibi [illegible] [illegible] et [illegible] [illegible]. [illegible] in [illegible] [illegible] famam tuam [illegible] [illegible] [illegible] [illegible], quod in aliorum [illegible] exerces [illegible] [illegible] [illegible] [illegible] inquietudinem at et [illegible] [illegible] [illegible] modum [illegible] [illegible] [illegible] [illegible] [illegible] potest. Hinc S. Gregorius magnus [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] debemus [illegible] tollere, ut nobis [illegible] [illegible] et aliquando autem compescere [illegible] de nobis mala [illegible], eorum qui audire [illegible] ad bona [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] et [illegible] [illegible] erga illos rite [illegible] exerceat [illegible] [illegible] [illegible] pariter habeant et [illegible] rite exercendi [illegible] quod infamia [illegible] nisi tamen [illegible] aliter [illegible]

[illegible] [illegible] [illegible], quaestio an [illegible] materia [illegible] [illegible] in [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] peccato [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] magis [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] et [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] et [illegible] [illegible] [illegible], et [illegible] [illegible] [illegible] [illegible] [illegible] crimen [illegible]. Hinc [illegible] [illegible] [illegible] [illegible] [illegible] propositiones damnatae sunt, quando [illegible] [illegible] [illegible] [illegible]

[illegible] crimen [illegible]

[illegible] falsum crimen [illegible]

[illegible] in [illegible] crimen [illegible]

Quamvis vero crimen doceat, eum proximo infamatori falsum crimen opponit, peccare [illegible]

[illegible]

[illegible]

[illegible] [illegible] at [illegible]

[illegible] alterius cum moderamine inculpatæ tutelæ: ita nemo

[illegible] eodem moderamine. Atqui

[illegible] casu [illegible]

[illegible] et [illegible]

justitia. minor prob. ex S. Thoma qui ait loco cit. falsitatem proponere in [illegible]

[illegible]

[illegible]

vel infamatoris sui vera vel occulta crimina [illegible], sic [illegible] liquet ex illo [illegible]

[illegible] non reddentes malum pro malo nec maledictum pro maledicto sed e contrario benedicentes

[illegible] ut benedictionem hereditate possideatis. Ratio autem est [illegible]

[illegible] alterum [illegible]

[illegible]

[illegible]

[illegible] non [illegible]

[illegible]

[illegible] 7.

[illegible]

[illegible] antea [illegible]

[illegible]

[illegible] ad avertendum damnum quod [illegible]

[illegible] restat [illegible] [illegible] [illegible] [illegible] pro se [illegible] [illegible] [illegible]
[illegible] [illegible] tunc [illegible] [illegible] [illegible] hoc negari [illegible] [illegible]

[illegible] [illegible] sit hic manifestus [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] manifestari [illegible] [illegible] ac negare ad famam, propter [illegible]
[illegible] [illegible] [illegible] [illegible] non sit [illegible] [illegible] consequendi negare [illegible]
[illegible] [illegible] aliter [illegible] ex [illegible] juramento [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] ad restitutionem quia tunc sine justa [illegible]
[illegible] [illegible] famam proximi [illegible] intrinsece malum et contra [illegible] [illegible] [illegible] ad famam
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] infamia non [illegible] [illegible] sit [illegible] mihi injuste [illegible] [illegible] in
[illegible] [illegible] [illegible], et [illegible] excessus sive [illegible] [illegible] ex justitia [illegible] [illegible]
[illegible] [illegible] [illegible], [illegible] [illegible] facultas reprehendendi detractionem [illegible]
[illegible] [illegible] [illegible] odium et [illegible] [illegible] [illegible], sed [illegible] [illegible] [illegible]
[illegible] [illegible], [illegible] [illegible] [illegible] [illegible] et misericordia

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] argumentum [illegible] infamia [illegible] tamen [illegible] [illegible] [illegible]
[illegible] [illegible] famam [illegible] [illegible] erit [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] inter utramque [illegible] [illegible] [illegible]
[illegible] et illius excessus remissio fiat.

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] restituere [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] sententia affirmans una negans altera et ex utra-
que parte stant [illegible], ac graves Theologi.

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

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[illegible] cooperatione mutua [illegible]

[illegible] et solvere [illegible]

[illegible]

[illegible] restitutionem [illegible]

[illegible] et alteri [illegible]

[illegible] ex pacto [illegible] restitutione [illegible] erat. Deinde [illegible] in hoc casu non [illegible]

[illegible] tamen [illegible]

[illegible] restitutionem obtineat, cogetur et ipse restituere.

Contraria sententia [illegible] argumentis [illegible]. Fama alterius [illegible]

[illegible] peccatum [illegible]

[illegible] conditione [illegible]

[illegible] voluntas [illegible] fama

[illegible] voluntas [illegible]

[illegible] ipso [illegible] quemadmodum [illegible] maxime infamandi [illegible]

[illegible]

[illegible]. Si vero infamatori [illegible]

[illegible] satisfactionem [illegible]

[illegible]

[illegible]

propterea [illegible] erit in eadem [illegible]

[illegible]

[illegible]

non [illegible] famam restituere [illegible]

[illegible]

[illegible] sententia [illegible] reddere [illegible] mutua

[illegible]

[illegible] sententia [illegible]

[illegible] infamatoris [illegible] studeri [illegible] ea [illegible] non [illegible] aliis satisfacere vult aut [illegible] [illegible] non, ex [illegible] non est compensatio, sed mutua condonatio, ac remissio.

Ad 2dum argumentum quod attinet, personae [illegible] compensationem [illegible] iuxta omnes [illegible] compensationis quae fit in pecuniis est valde diversa [illegible] Nam in [illegible] pecuniaria [illegible] ita est compensatio, ut non solum valeat [illegible] sed etiam aliquid occulte surripere [illegible] in compensatione tamquam et ipsi [illegible] non [illegible] ad suae infamiae compensandae [illegible] si compensatio [illegible] non licet alienae famae incurrere et [illegible] causa famae [illegible] et retinere: [illegible] compensatio [illegible] efficit ut possit quasi retinere aliena [illegible] efficere [illegible] licite [illegible] quae aliena [illegible] non [illegible] continuata, esse et [illegible] Deinde [illegible] semper aut retinet [illegible] in compensatione [illegible] [illegible] retinere [illegible] [illegible] non [illegible] retentione est formaliter [illegible] [illegible] satisfacere [illegible] ita pertinet ad [illegible]

[illegible]

[illegible] officii [illegible] [illegible]

[illegible]

[illegible] et ad huiusmodi [illegible] [illegible] [illegible] convent[i]ones [illegible] sententias [illegible] [illegible]

[illegible] quod proprie [illegible] hoc nostro tempore quo

[illegible] et [illegible] pecunia [illegible].

[illegible] conventiones in pecuniis [illegible] [illegible] pecuniis [illegible]

[illegible] probantis ergo.

[illegible] III.

De iniuriis contra [illegible] [illegible]
[illegible]

Inter injurias quae honorem laedunt, primum locum tenet contumelia: imo contumelia plerumque generatim accipitur [illegible] contra honorem injurias comprehendit. Qui [illegible] alterius [illegible] aut [illegible] verbo aequivalens injusta et aperta laesio, aut abs[illegible] [illegible] auctoritate [illegible] crimen [illegible] alter [illegible] injuriae [illegible] honoris [illegible] concilian-da, illud imminendo [illegible] Sed major [illegible] exigimus.

[illegible] contumeliae et detractionis [illegible] proximi [illegible] verbis [illegible] Angelicus [illegible] quia [illegible] injusta laesio [illegible] et animo [illegible] Doctor [illegible] abjicus [illegible] et in [illegible] Apostolus [illegible]

[illegible] contumeliae [illegible]

337.2 [illegible] contentus [illegible] [illegible] habuimus, et [illegible] non habemus. [illegible]

[illegible] [illegible] venire non [illegible]

[illegible] executione [illegible] statio [illegible] ita [illegible]

[illegible] ut magna [illegible] in [illegible]

[illegible] commune [illegible] non [illegible]

[illegible] causa [illegible] et inde [illegible]

subditi quod emendent.

[illegible] materiam [illegible]

[illegible]

[illegible] cal. [illegible]

[illegible] convenit, vel [illegible] tamen [illegible]

[illegible] et [illegible]

[illegible] mercede [illegible]

[illegible]

[illegible] ex illo [illegible] vicit [illegible]

[illegible]

[illegible]

[illegible] huiusmodi [illegible]

[illegible]

[illegible] morte

[illegible]

[illegible]

[illegible] et [illegible]

[illegible] notabiliter [illegible]

[illegible] [illegible]

de materiali. Ita licet advertat [illegible] eadem [illegible] [illegible]
[illegible]
[illegible]
[illegible]
[illegible] justa causa
[illegible] potest [illegible]
[illegible] contristandi [illegible] licet [illegible]
[illegible] tamen [illegible] non excusat a peccato [illegible]
[illegible] graviter [illegible], vel [illegible]
in proximo [illegible] mortalis [illegible] justa causa [illegible]

Dixi contumeliam esse ex suo genere mortale, [illegible]
[illegible]
contumelia [illegible] ex animo [illegible] intendat [illegible]
[illegible] non [illegible] honestas et [illegible] aliquando [illegible]
[illegible]
[illegible]
[illegible] contumeliis [illegible]
[illegible] ex intentione [illegible]
[illegible]
[illegible] conditione aut [illegible]
[illegible] mortalis [illegible] ac [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible] contumeliis [illegible]
[illegible]

 [illegible] aut exprimere [illegible] necessarii [illegible] contingere; quia simul coluti [illegible] famae aut [illegible] aut [illegible] existimationi [illegible]

[illegible] [illegible] [illegible] et [illegible] Hec [illegible] [illegible] sine a detractione [illegible] [illegible] Ita et ad D. Thomas quest. 73. art. [illegible] = sicut aliquis [illegible] intendit [illegible] honorem deprimere, et [illegible] famam, [illegible] amicitia, ita etiam [illegible] aliquis in tendit [illegible] ille qui [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], [illegible] etiam [illegible] [illegible] [illegible] a premissis [illegible] sed quare [illegible] audire etiam [illegible] [illegible] subsequenti = [illegible] inquit non [illegible] de aliquo malo [illegible] [illegible] [illegible] non pro [illegible] accipit, [illegible] unde [illegible] vel [illegible] [illegible], ex quo [illegible] [illegible] [illegible] [illegible] hoc est, quia [illegible] et [illegible] [illegible] aliquid [illegible] [illegible] [illegible] [illegible] uno modo secundum se alio modo [illegible] persone [illegible] aliquis [illegible] persone [illegible], vel [illegible] [illegible] [illegible] [illegible], quia secundum se [illegible] est, [illegible] veniale, et [illegible] [illegible] [illegible] [illegible] [illegible] quasi [illegible] ratione persone, sicut [illegible], [illegible] [illegible] et [illegible] [illegible] solemus [illegible] aliquid [illegible] vel [illegible] [illegible] [illegible], et [illegible] [illegible] ut [illegible] ejus [illegible] non sit [illegible], sed sit quasi pro [illegible] [illegible] est [illegible] [illegible] mortale et tanto gravius quanto major [illegible] persone [illegible], [illegible] [illegible] [illegible] [illegible] Deus, et [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] Deinde [illegible] [illegible] [illegible] [illegible], quia [illegible] hoc [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] mortalis [illegible] contra [illegible] [illegible] [illegible] graviter [illegible] proximi, [illegible] sine tali animo [illegible] sine justa [illegible] [illegible], aut [illegible] [illegible] graviter [illegible], aut [illegible] [illegible] [illegible] sine justa causa [illegible] proximo [illegible] [illegible] [illegible] [illegible] veniale peccatum [illegible] [illegible] [illegible] [illegible] alterius [illegible] [illegible] [illegible] [illegible] [illegible] quod [illegible] advertere debet, qui solent in conventis [illegible]

quibus

[illegible] ... insinet [illegible] culpa [illegible] prudenter adhibeatur ad emendationem personae derisae, etiamsi sit [illegible] aliqua ipsius erubescentia. Quin etiam affirmant ad virtutem eutrapeliae, seu honestae delectationis, posse interdum [illegible], et causare derisiones de levi alicuius defectu. Unde etiam viri graves, et [illegible] hos derisionibus [illegible] animi reficiendi causa.

Maledictio est qua quis optat, vel imprecatur creaturae malum [illegible] tione mali Dicitur primo creaturae rationali. Sunt enim creaturae quae ratione carent secundum se sumptae sunt incapaces boni, vel mali in ordine ad felicitatem, aut infelicitatem; ita et maledictionis incapaces sunt. Unde maledicere eis secundum se consideratis est otiosum, et vanum, et per consequens illicitum, ait D. Thomas quaest. 76. art. 2. Itaque tantum veniale est maledicere mortuis, bruto, [illegible] [illegible] sicut et rei, [illegible] [illegible] [illegible] maledicere creaturis ratione carentibus, [illegible] [illegible] [illegible] maledicere [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ante [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] maledicere [illegible] [illegible] ratione [illegible] [illegible] [illegible]

[illegible]

[illegible] [illegible] ... [illegible] [illegible] maledicit anathematizando. [illegible] etiam Prophetae in Scripturis [illegible] [illegible] mala [illegible] [illegible]

man

566 [illegible] justitiae [illegible] [illegible] modo [illegible]

[illegible] [illegible] [illegible] utilis, [illegible]

[illegible] aliquod [illegible] impedimentum, vel ut [illegible]

[illegible] tamen ita [illegible]

[illegible] ad utilitatem [illegible]

ad [illegible] maledictum [illegible] morte [illegible]

[illegible] sicut maledictum [illegible] ille qui [illegible] ex [illegible] obvin-

dictam ex odio ira, etc.

Maledictio suo genere [illegible] mortale [illegible] inquit [illegible]

[illegible] art. 5. — et tanto [illegible] quanto persona [illegible] ma-

gis amare et revereri tenemur. Unde [illegible] qui [illegible] maledixerit [illegible]

et matri morte moriatur. [illegible] tamen [illegible] maledictionis prolatio [illegible]

[illegible] vel propter [illegible] malum [illegible] vel etiam

propter affectum eius qui profert maledictionis verba [illegible] ex levi [illegible] vel ex [illegible]

aut [illegible] verba [illegible] quia peccata [illegible] maxime [illegible]

[illegible]

[illegible] requiruntur ut [illegible] sit [illegible] grave. [illegible]

[illegible] ex animo. [illegible]

[illegible] [illegible] maledictiones [illegible] et [illegible] intimam [illegible]

[illegible] [illegible] interius [illegible]

[illegible] unde [illegible] momento

[illegible] [illegible] filiis aut [illegible]

[illegible] non [illegible] tamen [illegible]

[illegible]

[illegible] fiunt. In [illegible] non ex animo [illegible]

[illegible]

[illegible]

[illegible] in [illegible] reticent, ut accant aeque, [illegible] non [illegible] momento [illegible] particularia inter se specie differre, ad desiderium mali [illegible] de iis, qui proximi in honore sequuntur.

[illegible] quod profecto impetit propter contumelias nobis illatas.

[illegible] proximo [illegible]

[illegible] juxta [illegible] quid [illegible]
[illegible] [illegible] frater [illegible]
[illegible] prius [illegible]
[illegible] contumelia [illegible] illata fuerit [illegible] apud illos [illegible]
[illegible] fieri, vel [illegible] ita, ut satisfactio iis [illegible] alias non [illegible]
æqualitate honor [illegible] injuria [illegible].

[illegible] modi compensandi [illegible]
[illegible] invitare ad mensam [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible] humiliando [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
acceptare vindictam quod [illegible].

Sed [illegible] in [illegible]
[illegible] bona [illegible]
[illegible] non [illegible]
[illegible]
in hoc [illegible] illustravit [illegible]
[illegible]

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[illegible]
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[illegible]
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[illegible]

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[illegible] acceptum ob turpem caussam [illegible] rei [illegible] ne sit necessario restituendum [illegible] ne irritas acquisitiones rei ob turpem caussam dedit, et decit [illegible] acquirendi [illegible] habilis ad acquirendum rei illius dominium. 105.

Conclusio.

Omnia pacta et promissa quae [illegible] scellere [illegible] facta fuerunt nullas habent vim et [illegible] etc.

[illegible] acceptum per modum pretii pro actione [illegible] ex virtute justitiae restitui debeat.

[illegible] muneris [illegible] alter majorem quam [illegible] quamque teneri [illegible] debeat.

An restituenda sint quae accipiuntur [illegible] vel omissione [illegible] ex virtute justitiae distincta

Sectio II.

Cui facienda sit restitutio.

[illegible] restitutio domino [illegible] re [illegible] alium [illegible]

[illegible] creditori meo, sed ipso invito [illegible] creditor meus debet

[illegible] quod Pauli [illegible] debetne id Paulo restituere.

[illegible] domino non esse restituenda.

Conclusio

[illegible] domino non [illegible] amittendum sit.

Sectio III

Quando restituendum sit.

Conclusio. I.

Restitutio vel in re vel in voto necessaria [illegible] ad salutem [illegible] Divini et humani.

Conclusio II

[illegible] primario [illegible]

Nonnulla corollaria ex dicta conclusione - 40, et seq.

Sectio IV.

Quo ordine creditoribus satisfaciendum seu quinam prælati ferri debeant.

De quo debitore hic quæstio procedit. Quinam veniunt nomine creditorum. Quotuplices sint creditores. Qui vocati hypothecarii. Quenam est hypotheca tacita et quenam expressa. Quando hypotheca sit generalis, et quando specialis. Quodnam inter has discrimen. Quinam vocant creditores chirographarii, seu personales. Certum est si quid debitoris extet in re aliena creditori reddenda esse. 164
An res debitori vendita præ omnibus creditoribus venditori reddi debeat 165.
An venditor præferendus sit aliis creditoribus, si venditio peracta fuerit cum translatione dominii. 166.

Conclusio.

Opinio quæ omnem prælationem negat, probabilior videtur spectato, ... certa debita solvenda sint antequam solvantur incerta 167.
An debitum ex titulo oneroso prius solvendum sit quam debitum ex titulo gratuito. Et utrum debita ex delicto, et injuria, juste certa præferenda sint debitis ex justo contractu 169.
Annumeranda sunt nonnulla circa hanc quæstionem 190.
191, et seq.

Sectio V.

Quo loco, cujus impensis et cujus periculo restituendum sit.

In quo loco cujus sumptibus et cujusnam periculo debeat restitutio fieri, si debita restituendi oriatur ex injuria 199.
Quo loco, cujus impensis et cujusnam periculo restituenda sint quæ detinentur ex re accepta bona fide, et ex contractu. 202.
Quo loco, cujusnam sumptibus et periculo restituenda sint debita ex contractu. 203.

Sectio VI.

Quæ causa excuset inculpatè ut tempore differre aut omittere restitutionem liceat possit.

Causa propter quam licite ... restitutio generaliter ... quod efficit ut ... ad restitutionem ...
... necessitate ... impotentia ...

utrum cessio bonorum extinguat, aut solum suspendat debitum restituendi, ut facit necessitas.
An qui immemor sui ... tantum habet creditori, quantum ei debet, liber sit a restituendo. 221.
An sint restituenda bona fortunae cum detrimento eorum ... 222
An excusetur a restituendo, qui damnum in bonis superioris ordinis illatum reparare nequit ... per bona ordinis inferioris, 223
Quid demum sit, quod obligationem prorsus extinguit. 226.

Appendix de compensatione ...

Quid compensatio occulta. Quaenam ad eam conditiones concurrere debent.
Fitne debitori injuria si creditor in compensationem retineat res ejus apud se depositas vel sibi commodatas 220, et seq.
Corollarium nonnullarum ... servandarum ... confessario. 222. 223.

Caput IV.

De injuriis et restitutione in particulari.

In quot classes tribuantur bona. Quotuplicia sunt bona spiritualia. Quaenam naturalia 224
Quaenam sunt supernaturalia, et quid super his omnibus bonis censendum. 225.

Articulus I.

De injuriis in bonis ordinis ... seu in corpore ... homicidio et mutilationes per ... adulterium, et ... hujusmodi injuriis reparandis ... ... homicidio ... licet ...

226

Sectio I.

An liceat seipsum ...

Quibus ... modis possit aliquis seipsum occidere 227

Conclusio I

Sine auctoritate ... est ...
... occisio ... seipsum ... 228
Duo, ex hac conclusione corollaria 229

Conclusio II

... licet se indirecte et negative occidere 230
... resolutiones ex hac conclusione. 231.

Conclusio III

... memoriae ... 232

Sectio II.

De verberatione, et homicidio publica auctoritate [illegible]

Cuinam liceat verberare alium [illegible] culpa, ne ab eo comissa [illegible] 233

[illegible] et cuinam liceat criminosos homines morte punire. ibid.

An liceat [illegible] 236

[illegible] VII [illegible]

[illegible] 237

Quid [illegible] 23[illegible]

[illegible] innocentem [illegible] 239

Conclusio

Etiamsi [illegible] etiamsi [illegible]

[illegible]

[illegible]

[illegible] scientia [illegible]

Sectio III.

An liceat privata auctoritate quempiam occidere [illegible]

[illegible] honoris, iniuriae et [illegible]

[illegible] 242

Conclusio I.

Non licet occidere, aut periculo mortis exponere [illegible] majorem bonorum temporalium, etiamsi sint magni momenti, et aliter [illegible] possint [illegible] tamen non sint necessaria ad vivendum 243

Conclusio II.

Injuriam [illegible] honoris [illegible] illicitum est [illegible] ut multi [illegible] quidem male negant. 248

Quid est duellum [illegible]

An duellum [illegible] [illegible]

malum, et culpa lethalis.

Quena [illegible] poena duelli.

Quinam admirationes.

Num licita sit occisio invadentis pudicitiae [illegible] 253.

Conclusio III. [illegible]

[illegible] pudicitiae [illegible] non licet [illegible]

An [illegible] liceat [illegible]

sint super hac quaestione

Conclusio IV. 257 [illegible]

[illegible]

[illegible] [illegible] sit [illegible] [illegible] [illegible] [illegible] [illegible] peccati [illegible]
~~[illegible]~~ [illegible] [illegible] [illegible] [illegible] matri [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] secutum
[illegible]. 6[illegible]

Si [illegible] foetus non est animatus [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] nec [illegible] [illegible] [illegible] [illegible] [illegible] medicina [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] matris [illegible] [illegible]
[illegible] [illegible]. 260

Si foetus sit, ut putatur esse jam animatus, matrem crimen est
adhibere remedium [illegible] suae ordinatum [illegible] morbo [illegible] [illegible]
[illegible] [illegible] medicamento [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] medicina [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] sive medicina sumatur sive non.

An jus [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] 267
[illegible] [illegible] [illegible]

Sectio IV. [illegible] [illegible] 268

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible],
[illegible] [illegible] [illegible] [illegible] [illegible]

Qui homicidii causa est et [illegible], non excusat, et [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] nomine [illegible] societate humana. 269
[illegible] [illegible] [illegible] homi[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] aliquis consecuta est, [illegible] nullo modo [illegible] in actione
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible].

[illegible] homicidii et restitutionem [illegible] est [illegible] [illegible] [illegible] [illegible] 270
[illegible] [illegible] [illegible] [illegible], sed periculum [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] homicidii [illegible] inde [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] qui [illegible] [illegible] [illegible] nec [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] homicidii. [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] mors homi-
cidii [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ipsi re-
misit et quando consentius sit remisisse

[illegible] [illegible] [illegible] [illegible] [illegible] occidere [illegible] occidit [illegible]
[illegible] invincibiliter [illegible] [illegible] inimicum suum

An [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] obligatione
[illegible] [illegible] [illegible] tertio cui per errorem crimen ho-
micidii imputatur.

[illegible] [illegible] ratione homi[illegible] [illegible].

Conclusio.

Debet injuriis occisor, mutilator, et percussor reparare omnia damna realia quae morte praecedunt, et quae [illegible].

Quibus praestanda [illegible] restitutio 275

Sectio V.

[illegible] et seq.

De injuriis per stuprum, adulterium et similes [illegible] illatis, et de congrua restitutione.

Quid nomine luxuriae et [illegible] [illegible]

An corruptor virginis injuriam ei [illegible] quando sine [illegible] sine importunitate precum et promissione matrimonii [illegible] ac libere, [illegible] virginis consensu turpe [illegible] [illegible] [illegible] 277.

Quid si [illegible] virgine [illegible] corrumperit [illegible] garientis, et [illegible] [illegible] in causa [illegible] ipsa dixit 280

Quid si [illegible] tali [illegible] [illegible] 281. ibid.

Si proles [illegible] fuerit [illegible] [illegible] debet [illegible] ex justitia eas expensas restituere, [illegible] in prolis [illegible]. 282

An ille qui [illegible] cum virgine [illegible] sub cura parentum [illegible] [illegible] et [illegible] at ipsis restituere si [illegible] ut juxta sua [illegible] ea in matrimonio collocent. 282.

An qui tenetur qui virginem [illegible] ipsa [illegible] et ad eas [illegible] [illegible] sed sine promissione matrimonii.

An [illegible] qui repetitis [illegible] virgine [illegible] in consensum [illegible] compensationis [illegible] 284

[illegible] violentus virginis [illegible] teneatur eam [illegible] si puella [illegible] sed velit eam injuste deflorans [illegible] matrimonium inire

An [illegible] corruptor tenetur ad [illegible], si puellae [illegible] parentes nullum damnum [illegible] [illegible] occultus et ipsa quae [illegible] [illegible] [illegible] inveniri 285

An quid tenetur corruptor virginis, qui eam [illegible] [illegible] conjugii. 286. ibid.

Nonnullae exceptiones super hac quaestione.

An quid teneantur adulteri si adsit certitudo moralis prolem ex adulterio [illegible] et si maritus [illegible] 287 et seq.

Quomodo possit ac debeat adultera compensare damna quae [illegible] ex adulterio suscepto. Et si [illegible] modis non [illegible] damna resarcire teneatur se prodere, et [illegible] acquirere, ut [illegible] legitimum [illegible] [illegible]

An adulteri ad aliquid obligati sint quando probabiles rationes habent dubitandi cujusnam sit proles nata, mariti ne an adulteri. 290.

Utrum adulter teneatur aliquid restituere marito adulteræ pro injuria quando proles secuta non est.
Quid si maritus satisfactione pecuniaria malit. 297.
298.

Articulus II.

De injusta læsione famæ, atque honoris, et de necessaria reparatione.

Quot modis possumus famæ proximi nocere. 298.
Quot modis fieri detractio potest. 300.

Sectio I.

De injuriis internis contra famam proximi, seu de temeraria dubitatione suspicione et judicio.

Quid judicium, et utrum voluntas debeat intellectum in meliorem partem determinare. 303
Quomodo dubia in partem, quæ proximo favet interpretanda sint. 304.
Quomodo desumendus gradus culpæ, quæ per suspiciones, ac dubitationes temerarias [illegible] 305.

Conclusio.

Non modo judicium certum, sed etiam opinio irrationabiliter temeraria cum plena advertentia, et de re gravi cementa est culpa gravis. 311

Sectio II.

De injuriis externis contra famam proximi, seu de detractione

Conclusio.

Detractio non modo formalis seu quæ directo nocendi proposito, etc. 314.
Quando ratione necessitatis vel utilitatis manifestatio [illegible] criminis sit immunis a culpa.
Quid est proprie secretum, et utrum in iis casibus, in quibus quis posset crimen aperire propter utilitatem non possit jam absque injuria ratione secreti. 317.
320
De secreto quod quis promittit, potestne obligari etiam ex justitia. 322
Si secretum promisisti te servaturum etiam cum vitæ discrimine, tantane obligatione adstringaris etiam erga quemcumque [illegible]. 324.
Utrum sit mortale peccatum generatim asserere tales homines [illegible] 327.
An graviter detrahens [illegible] peccatum patret qui [illegible] de proximo [illegible] in genere dicit: de tali homine [illegible] quod de eo [illegible] suspicarer [illegible] dicere etc.
An et [illegible] crimen se audivisse narrat [illegible] [illegible]
An [illegible] contra [illegible] qui famam de uno, aut alio crimine [illegible]
An et quatenus [illegible] crimen [illegible] in uno loco narrat in alio [illegible] in eodem loco [illegible] in ignorantiam manifestat. 330. et 331
[illegible] unicuique [illegible] altero [illegible] [illegible] patefacere. 334
[illegible] [illegible] dissolvere [illegible] ut inimici fiant, sed ut [illegible]
[illegible] narrat [illegible] consilio [illegible] etc. alterum ad [illegible] inducit [illegible] provocat [illegible] de suo [illegible] sermone detrahi [illegible] etc. 340
Quomodo delinquit qui [illegible] nec [illegible] exteriori signo [illegible] auscultat [illegible] in re gravi [illegible] 341
An [illegible] gravis [illegible] detractione [illegible]

An superior [illegible] extractione [illegible] [illegible] ex iustitia. 3[illegible]

Quinam sunt obnoxii reparandæ famæ [illegible]

Quo modo et quid [illegible] fama restitui debet [illegible]

Quando et quanti restituere [illegible] [illegible] [illegible]. 3[illegible]

Quænam caussæ excusent a restitutione famæ ablatæ. 352. et seq.

An detur in hac materia ~~[illegible]~~ detractionis cum compensatione. 355, et seq.

Sectio III

De injuriis contra honorem [illegible] et [illegible] pro his injuriis restituendum sit.

Quid est contumelia 361.

Quotuplex contumelia 362.

An contumelia sit ex genere suo peccatum mortale contra iustitiam; [illegible]

[illegible] irrisio aut illusio et an irrisio sit mortalis contra iustitiam. [illegible]

Quid est maledictio. 365.

An maledictio sit ex genere suo peccatum mortale et quot requiruntur ut maledictio sit peccatum grave.

An christianus debeat repellere [illegible] contumelias sibi illatas. 366.

An honor iniuste [illegible] restitui debeat et quomodo. 367. [illegible]

Variis modis [illegible] [illegible] honoris, qui [illegible] [illegible] assignantur. 368.

Finis Indicis

De [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] nabeat [illegible]

[illegible] libi ham [illegible]

[illegible] ... [illegible]

[illegible] ... [illegible]

[illegible] ... [illegible]

[illegible] ... [illegible]

[illegible] ... [illegible]

[illegible] qualis e' [illegible] ... [illegible]

[illegible] sit [illegible]. Unde conveniens et [illegible] ... [illegible]

[illegible] ... [illegible] non habet

[illegible] naturale [illegible] ... [illegible]

[illegible] ... [illegible]

[illegible] ... [illegible]

[illegible] ipsi tributa [illegible].

Dicitur 2° in [illegible], [illegible] ut acceptatio [illegible] ... [illegible]

[illegible] ... [illegible]

[illegible] ... [illegible]

[illegible] stimulationes [illegible].

[illegible] data definitione pacti [illegible] ... [illegible]

[illegible] ... [illegible]

[illegible] proprietas cuiusq pacti e' obligatio naturalis: unde [illegible] ...

[illegible] ... humane, quale [illegible] ... [illegible]

[illegible] ... [illegible]

[illegible] cuiusvis rei [illegible] vel faciende [illegible]

[illegible] ... [illegible]

[illegible] ... [illegible]

[illegible] vel plurium voluntates in unum trahit. Contrac[illegible]

[illegible] ... [illegible]

+ contractus vero stricte [illegible] de [illegible]

[illegible] ultro citroque obligatio [illegible]

[illegible] effectus ejusdem contractus [illegible]

[illegible] ex [illegible] voluntatis con-

[illegible] aliquo [illegible] manifestata obli-

gatio nascitur [illegible]

[illegible]

[illegible] inter duos aut plures [illegible]

[illegible] naturam ejus [illegible] in hunc modum [illegible]

[illegible] consensus, et conventio

[illegible] discrimen [illegible] inter pacta et contra-

[illegible]

[illegible] contractus [illegible] non tamen [illegible]

[illegible] contractus, et pactum [illegible]

[illegible]

[illegible]

[illegible] contractus [illegible]

[illegible]

[illegible]

[illegible] non [illegible]

[illegible]

[illegible]

[illegible] mutuo [illegible]

[illegible] contractus [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] ex [illegible]
[illegible]
[illegible]
[illegible] et [illegible]
[illegible]
[illegible]

[illegible]
[illegible]
[illegible]
[illegible] in [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
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[illegible]
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[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]

[illegible] contra [illegible] [illegible] [illegible]

[illegible] testibus [illegible] contractu [illegible] [illegible]

[illegible] [illegible] [illegible] in hoc [illegible]

[illegible] [illegible] ex testamento [illegible] conditiones [illegible] [illegible]

[illegible] et [illegible] [illegible]

[illegible] incontinentia [illegible] [illegible] [illegible]

[illegible] aliqua [illegible] [illegible] [illegible] [illegible]

[illegible] in [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] est

[illegible] non potest, ut quod lege [illegible] [illegible]

[illegible] [illegible] [illegible] in alicuius dominium

[illegible] [illegible] [illegible] contractus [illegible]

[illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] iuris [illegible] [illegible]

Praeterea lex [illegible] contractus certis [illegible] [illegible]

[illegible] [illegible] in [illegible] fraudis. [illegible] si certo [illegible]

[illegible] fraudes contractu [illegible]

[illegible] [illegible] [illegible] [illegible]

[illegible] fraudes [illegible] [illegible]

[illegible]

[illegible] ius [illegible]

[illegible]

[illegible] sed [illegible] sub conditione [illegible] [illegible]

id quod [illegible] [illegible] est [illegible] et [illegible] ius [illegible] [illegible] ut secre-

[illegible]

[illegible] [illegible] [illegible] [illegible] non [illegible]

[illegible] [illegible]

[illegible]

[illegible] contractus [illegible] subsistere [illegible] detrimento [illegible] humanis legibus [illegible] studia et [illegible] instituta sunt [illegible] leges [illegible] et [illegible]

[illegible]

[illegible] contractus [illegible] in [illegible] praesumptione [illegible] contra [illegible] non [illegible] quod nunquam abest [illegible] in omni contractu servandae: et ne [illegible] cum [illegible] maxima [illegible] quae [illegible] in hoc aut in illo [illegible] contractu [illegible] quoscunque contractus, qui requisita solemnitate carent.

Accedit, quod singuli contrahentes ex arbitrio, [illegible] perscripserunt [illegible] contrahentes [illegible] ipsimet contrahentes [illegible] contrarius [illegible]

[illegible]

20 [illegible] in conuenta [illegible] [illegible] [illegible]

[illegible], non [illegible] contractus contra legem, [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] Ita [illegible] [illegible] [illegible]

[illegible] fuerit [illegible] firmitate, [illegible] in canone 20 de regula-

[illegible] [illegible] [illegible] lege, [illegible] [illegible] [illegible] [illegible]

si lex [illegible] contractum [illegible]

[illegible] matrimonium [illegible] [illegible] [illegible] illicite [illegible]

[illegible] [illegible] valet [illegible] contrahat [illegible] [illegible]

[illegible] si vero [illegible] [illegible] [illegible] contractum illicite [illegible]

[illegible] [illegible] [illegible] ex verbis [illegible] lex [illegible]

[illegible] si lex dicat contractum [illegible] [illegible] [illegible]

nullum [illegible] si lex declaret [illegible] [illegible] contractum [illegible]

[illegible] [illegible] non esse [illegible] [illegible] [illegible] quod ex tali

[illegible] [illegible] lex [illegible] lex clausulam irritantem

[illegible] lex [illegible] [illegible] [illegible] contractum

[illegible] [illegible]

[illegible]

[illegible] confirmet contractum [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] juramentum [illegible]

[illegible]

[illegible]

[illegible]

[illegible] quae tota Deum respicit, [illegible]

[illegible] et [illegible] et [illegible]

[illegible] necessitate [illegible] et [illegible]

[illegible] ex [illegible] quo fit, ut [illegible]

[illegible]

[illegible]

[illegible] revocatur [illegible]

[illegible]

[illegible] No [illegible]

[illegible]

[illegible]

[illegible]

[illegible] et reconsensus [illegible] ut dicant [illegible]

[illegible] juramenti [illegible] [illegible]

[illegible]

[illegible]

[illegible] qua obtenta [illegible]

III [illegible]

[illegible]

[illegible]

[illegible] solvere [illegible]

[illegible] solvit [illegible]

[illegible] aut Laboni juraverit [illegible]

[illegible] juramenti sui [illegible]

[illegible] fuerit [illegible] promiss [illegible]

[illegible] ex capite [illegible] ubi [illegible]

[illegible] et [illegible]

[illegible] qui [illegible] et [illegible]

[illegible]

[illegible] Ex quo capite cum Glossa colligi [illegible]

[illegible]

[illegible] numeranda [illegible]

[illegible] valent [illegible]

[illegible] magis [illegible] juramenti [illegible] ut [illegible]

[illegible] quod [illegible]

[illegible]

[illegible] contra justitia [illegible] quod [illegible]

nimirum quando, [illegible] juramentum [illegible] contractus, [illegible] non

[illegible] juramentum [illegible] contractus, [illegible]
aut irritabilis [illegible] juramentum [illegible] contractui extrinsecum [illegible] naturam eius immutare
[illegible] juxta [illegible]

[illegible] ex communi [illegible] contractus [illegible] juris [illegible] non
confirmari [illegible] immediate [illegible]
aliud conveniens utilitatem. Ratio [illegible] ex cita. capite. *si diligenti* [illegible] *de foro*
competenti [illegible] de pactis, quibus in locis dicitur, non posse
[illegible] pacti [illegible] in [illegible]
[illegible] contractus [illegible] exempla
[illegible] juramentum [illegible]
[illegible] ex [illegible] contractis [illegible] juramento [illegible]
[illegible]
[illegible] contractu et [illegible] confirmato [illegible]
[illegible]
[illegible] matrimonii [illegible]
[illegible] nonnulli [illegible]
et tamen [illegible] juramenti [illegible] juramentum [illegible]
[illegible] confirmat
[illegible]

[illegible]
[illegible] rescindibilis [illegible]
[illegible]
[illegible]

[illegible]
[illegible]

[illegible] cap. VIII [illegible]

[illegible] tamen juramento [illegible]

[illegible]

[illegible] accedente juramento [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] ergo [illegible]

[illegible]

[illegible]

[illegible]

[illegible] I

[illegible]

[illegible]

[illegible]

[illegible] II

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] ut scilicet [illegible] in [illegible]

[illegible]

[illegible] compellere non potest

[illegible] civili actione [illegible]

[illegible] pro [illegible] iuxta [illegible]

[illegible]

[illegible] ex una [illegible]

[illegible]

[illegible]

[illegible] inter se contra [illegible]

[illegible]

III

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

22 [illegible]

[illegible] tamen [illegible]

quia dici posset [illegible] causa [illegible]

[illegible] hoc contractus sive [illegible]

[illegible] aut [illegible]

[illegible]

[illegible] Qui aute [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

II.

[illegible]

[illegible] concludunt [illegible] reum quemcumque [illegible]

[illegible] in tormentis [illegible] in innocentem [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] matrimonium non subsistit. Nam voluntas [illegible]

[illegible]

[illegible] sine consensu. Ergo

[illegible] ex his duabus sententiis colligenda est [illegible]

[illegible]

[illegible]

[illegible]

[illegible] voluntas manifestandi in stipulatione, quod [illegible] promissiones [illegible]

[illegible]

[illegible] ex promisso [illegible] proxime [illegible]

[illegible] tamen in [illegible]

[illegible] impedire [illegible] quod inde alteri obvenire [illegible] illud, quod [illegible]

[illegible] compensare [illegible] injuste [illegible] damni causam [illegible] contra

[illegible] ac gravius in [illegible]

[illegible] justitiæ [illegible], ut sincero animo uterque con[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

32 [illegible]

[illegible]

[illegible]

[illegible] tutti per le sole verbali conven- [illegible] in libertà di [illegible] [illegible] la liberazione [illegible] [illegible] parte [illegible] che [illegible] [illegible]

[illegible]

[illegible] nel [illegible] [illegible]

[illegible] di [illegible] caso, ed [illegible] [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

3 — et quo [illegible] aenum [illegible]

naveh [illegible]

[illegible]

[illegible] commutatio [illegible]

[illegible] grande [illegible] ad [illegible] inceniens: executiones

[illegible] per conversationis, [illegible] in [illegible]

[illegible] imprudentia [illegible], permittere [illegible] non verum, sed simulatum [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] consistit in eo in quod primo

[illegible]

[illegible] vero acquisitio dominii in res conditas

[illegible] promissas certas summas pecuniae, quia

[illegible] conveniens [illegible] non sit.

4. — 1. Solum [illegible] circa accidentia seu accidentalis

[illegible]

[illegible] velit [illegible]

vero in accidentibus duplex est, [illegible] dicitur bona causa contractus, alter

[illegible]

[illegible]

[illegible] vero non [illegible]. Consensus huiusmodi erroris est [illegible]

[illegible] nullitate

[illegible] contractu [illegible]

[illegible]

[illegible] non ita [illegible] [illegible] [illegible] [illegible] pliciter, sed quod libentius et carius amas id quod verum [illegible] [illegible]

Ad errorem circa accidentia pertinet error circa ea in quibus [illegible] ratio [illegible] [illegible] personalem [illegible] [illegible] error circa rei substantiam [illegible] [illegible] [illegible] Nobilitas [illegible] [illegible] [illegible] sa persona ad contrahendum movet. Hac ratione [illegible]

Propositio I

Quilibet error, vel dolus, aut [illegible] [illegible] mone. Et communis et certa sententia

[illegible]

[illegible]

[illegible] naturâ contractus, vel mutua intrinseca
[illegible]
[illegible] et nec evidens [illegible] contractus a videra con-
[illegible] substantialis [illegible]
[illegible] nullo modo novit [illegible] nihil [illegible]
[illegible] certa [illegible] minor; [illegible] ut dicit [illegible]
[illegible]
[illegible]
huntas non ferat in incognitus, ut philosophicum habet effat.

[illegible]
[illegible]
[illegible]
[illegible] positio [illegible] solo errore concomitanti
[illegible] substantiae, non adest substantialis consensus [illegible]
[illegible] contractu [illegible] in re [illegible]

Nec dicat quispiam, tunc interpretativum consensum adesse [illegible]
[illegible] substantiae [illegible]

[illegible]

[illegible]
[illegible]
[illegible]
[illegible] concomitantes [illegible]
[illegible] ignorantia [illegible]
[illegible]

[illegible] non [illegible] ... [illegible]

[illegible] matrimonium [illegible]

[illegible] consortii [illegible]

[illegible] nulla [illegible]

[illegible] nonnisi solubili contractu fuere [illegible]

matrimonium nullum [illegible]

[illegible] aut [illegible]

[illegible]

[illegible]

[illegible] putabant [illegible]

[illegible]

[illegible]

Propositio II

[illegible] qualitate aut circumstantia [illegible] ex dolo [illegible]

[illegible] tamen [illegible] concomitans, nec praebeat causam contractui, nonne [illegible]

contrac[illegible] [illegible] ad eum dissolvendum sufficit.

[illegible]

[illegible]

[illegible]

[illegible] ibi [illegible] contrac[illegible]

[illegible]

[illegible]

[illegible]

14 [illegible] [illegible] [illegible] [illegible] a contrahen-
do abstinerent

[illegible] [illegible] pars [illegible] [illegible] non [illegible] [illegible] [illegible]

[illegible] contrariis [illegible] [illegible]

[illegible] non [illegible] contrariis [illegible]

[illegible]

[illegible] [illegible] illese

[illegible] [illegible] quantitate [illegible] ex [illegible]

[illegible]

[illegible] [illegible] [illegible] [illegible] [illegible]

[illegible]

[illegible]

[illegible] il terzo

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] fatta [illegible] [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] Hae [illegible] [illegible]

[illegible]

[illegible]

tri de contr[illegible] si superveniat dolus, qui contractui [illegible]
intervenerit. illi vero nuncupando contractum bonæ [illegible]
omnis ex uno consensu [illegible]
moverari ac temperare [illegible] tamen
[illegible]
[illegible]
[illegible] ratio [illegible]
[illegible]
quod æquo, et bono conveniens, et conforme sit.

[illegible]
[illegible] sunt, qui strictam verborum interpretationem exigunt [illegible]
[illegible] prout in contractu conventum est, non vero ulterius [illegible]
[illegible] testamenti, census [illegible]
[illegible] iuris stricti dicuntur, quia in iis [illegible]
[illegible]
[illegible]

[illegible]

[illegible] non iuris. [illegible]

[illegible]

tam distinct [illegible]

[illegible]

[illegible] hoc primo [illegible] et aeo exa[illegible] et co[illegible]tione prioris sententiæ

[illegible]

[illegible] auctor [illegible], quare [illegible]ficit, tamesi ex [illegible]

[illegible] tamen [illegible]

[illegible]

[illegible] convenient [illegible] contract[illegible] non [illegible] conservare [illegible]

[illegible] levi[?]e [illegible]

[illegible]

Iudaeus circa quod error versat, habet se per modum principalis motivi, et [illegible]

[illegible] Divus et aliis non. Dubium nonendo[?].

[illegible]

[illegible] manet[?]

[illegible]

[illegible] virtute conditionales etc. quia tunc qualitas, sive circumstantia intrinsece a

[illegible] Hierosolimitana ad [illegible]

[illegible]

 [illegible] circumstantiae [illegible]

[illegible]

[illegible]

[illegible]

Propositio III.

[illegible]

quenter valorem contractus non imp[illegible] dispensatione [illegible] ponat, quae restringat consensum ad [illegible] qualitatem in qua ipse decipitur [illegible]

[illegible] contractus valor [illegible] consensus [illegible]

Atqui tunc non deest consensus in substantia rei [illegible] consensus [illegible] tanquam [illegible] conditionis [illegible] in [illegible] ipsa le deren- [illegible] substantia [illegible] non [illegible] quod non valuisset. [illegible] de voluntatis actus [illegible] sub conditione talis [illegible] aliter [illegible] consensum [illegible] voluntarium, quod ex naturali jure requiritur [illegible] contractibus [illegible]

[illegible] sententia [illegible] matrimonii [illegible] contractus [illegible] postea [illegible] contractus [illegible] consensus [illegible]

[illegible] non [illegible] interit, per [illegible]

[illegible]

[illegible]

[illegible]

[illegible] ... excedit [illegible]

[illegible] [illegible] sine metu coactus, aut dolo [illegible] aut errore lapsus [illegible]

[illegible]

[illegible] non [illegible] injuria [illegible] et actione ac [illegible] L. eo qui [illegible] ubi dicit: nec lucrum de dolo suo reportet. [illegible]

[illegible] non valet

[illegible] dolo [illegible]

[illegible] valere [illegible] nullus [illegible]

[illegible] subsistere non possit etiam si [illegible] in eo permanere velit. [illegible] ante [illegible] communi [illegible] et [illegible]

[illegible]

[illegible]

[illegible] sufficit si in aliqua [illegible] [illegible] [illegible]

quandiu [illegible] veniat.

Contrahentibus [illegible] contrahendo [illegible] [illegible] ac proinde non [illegible] [illegible] ex parte [illegible] [illegible] contractum rescindere. [illegible] in casu [illegible] [illegible] [illegible] naturali iure debet tollere [illegible] [illegible] [illegible] [illegible]

Sunt tamen aliqui contractus qui arbitrio decepti rescindi non possunt, [illegible] ex altera parte [illegible] manet. sed tunc sententia [illegible] [illegible] [illegible] obligationem [illegible] [illegible] [illegible] compensare [illegible]

2 [illegible]

de eo

[illegible] incoata
[illegible] simulato, occulto, per-
[illegible] certa
[illegible] sunt

[illegible] si contractus solubilis sit. Nos aliter dicendum est [illegible]
[illegible]
[illegible] se accommodat natura rei de qua agitur, et conversio [illegible] absolutus irrevocabilis [illegible]
[illegible]
[illegible] profesiones, ac matrimonii,
[illegible] ipse id quod [illegible] exigat.

[illegible] deceptio [illegible]
[illegible]
[illegible]
[illegible]
[illegible]

[illegible] ad ea [illegible] facite se
[illegible]
[illegible] non erat tunc [illegible] quamvis [illegible]
[illegible]
[illegible]
[illegible] non [illegible] contrahentium [illegible]
[illegible] veritate [illegible] ad contrahendum
[illegible]
[illegible] contractus [illegible] non [illegible]

[illegible]

[illegible] error [illegible] contractui, [illegible]

n contrahente non derivet

[illegible] gratuita [illegible], ac liberalis [illegible]

[illegible]

[illegible] tota [illegible] manifestis,

[illegible] permanentes [illegible]

[illegible] insuperabiliter [illegible], sive [illegible]

[illegible]

[illegible] contrahendi [illegible]

[illegible] matrimonii [illegible]

[illegible] ne [illegible] inde [illegible]

[illegible] obligare [illegible]

notabiliter [illegible]

[illegible] judicari [illegible]

[illegible] voluntas in contractu [illegible] magis [illegible] Semper

[illegible]

[illegible] voluntas [illegible]

[illegible] ita [illegible]

[illegible] sine conditione [illegible]

[illegible]

[illegible]

[illegible]

& ut maxime [illegible]

[illegible] de [illegible]

[illegible]

[illegible] tamen [illegible] est [illegible]

[illegible]

[illegible] nomine [illegible] ipsius [illegible] [illegible] [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] [illegible] [illegible]

[illegible] eius [illegible]

liberis aut etiam domestici. [illegible] mala [illegible] communi [illegible]

[illegible] et [illegible] inter [illegible]

[illegible] illis [illegible]

[illegible]

[illegible]

[illegible]

[illegible] seu [illegible]

[illegible] et ipse [illegible] et [illegible]

[illegible]

[illegible]

[illegible]

[illegible] cum aliis [illegible]

[illegible]

[illegible] in [illegible]

[illegible]

[illegible]

[illegible] in malo timeat [illegible] id non [illegible] imponant. Quibus [illegible] sit

Digressio I

[illegible] moris [illegible] extra-

[illegible] valore quamvis [illegible] vexatori [illegible]

[illegible] sententia [illegible]

[illegible] in [illegible]

ergo [illegible] est [illegible]

re [illegible] est vel defectus voluntarii [illegible]

[illegible] utraque dici [illegible] potest. Non pro

ex injuria [illegible] necessitate [illegible]

[illegible] et ne [illegible] peccandi [illegible]

[illegible] de defectu voluntarii, quia [illegible]

[illegible]

[illegible] q. 6. art. 6. ubi ostendit [illegible]

[illegible]

[illegible] ad maius malum [illegible].

[illegible]

[illegible] mortis [illegible] gravissima [illegible] non [illegible]

[illegible] *vastit-* [illegible]

[illegible] *inter intra* [illegible]

[illegible] *contractus* [illegible] *ex iusto metu* [illegible]

[illegible] *causa contractui* [illegible] *inju-*

[illegible] *quod ad contractus* [illegible] *quod* [illegible]

[illegible] *contrahit, juxta* [illegible]

[illegible]

[illegible] *ut si caritate Deo* [illegible]

[illegible] *metu* [illegible] *in utroque casu* [illegible] *contractu* [illegible]

[illegible]

[illegible]

[illegible] extorta est ... cum exclusit consensui nihil tam contrarium est quam vis ... [illegible] nihil consensui l. 117 ff. de regulis juris, neque [illegible] ... exceptio ex capitulo [illegible] de sponsalibus [illegible] ... promissio [illegible] ... quocumque [illegible] ... constat [illegible]

Respondeo gratuitum non adversari metui [illegible] ... promissio gratuita promissio, est ratio [illegible] ... [illegible] metus [illegible] ... contractui [illegible] ... metus [illegible] ... contractum gratuitum non [illegible].

[illegible] ... contrahere consensui [illegible] ... [illegible]

[illegible] ... pactum contractum non subsistere.

Objicies 2do. [illegible] metus [illegible] ... contractus [illegible] ... [illegible]

[illegible] ... [illegible]

Respondeo contractum [illegible] ... revocationem [illegible] ... [illegible] ... contractus [illegible] ... [illegible]

[illegible]

Obiicit istio. Si cau[illegible] contractus, cui metus ab altero contrahente p[illegible] injuria [illegible] contractus creditor acquirat dominium rei sibi [illegible] contractus [illegible] moe percept[illegible] [illegible] non [illegible] [illegible] res in bonis ejus e[illegible]

[illegible] qui cum passus e[illegible] reinet[illegible] dominium [illegible] interpretatione [illegible] cum fructibus restituendo [illegible]

[illegible] videntur esse contradicto[illegible] sententia [illegible] quod ejusmodi [illegible] valore non obscure probant [illegible] ultima codice, de his, quae vi, ita [illegible] venditiones, donationes, transactiones, quae per [illegible] metus causa [illegible] [illegible]

que metu, et vi [illegible] debent [illegible]

[illegible] quando [illegible] [illegible] [illegible]
[illegible] dicere. [illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible] antecedenter ad intimationem consistunt.

Obstare huic assertioni videtur lex [illegible] [illegible]
[illegible] ex [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible] est [illegible] [illegible] statum
[illegible] suspendit. [illegible] [illegible] in [illegible] sua [illegible]
[illegible]. [illegible] [illegible] carere robore non [illegible] [illegible]
a [illegible] [illegible] sunt [illegible], et nullam [illegible] [illegible]
[illegible] passus est ad [illegible] petitionem annullari debent.

[illegible] iudicis sententiam [illegible] contractus [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible], sed etiam ex ratione. [illegible] iniusta causa [illegible]
alioqui non [illegible], sed [illegible] [illegible]. [illegible] iniurias ille [illegible] debet
[illegible] in pristinum statum reponere, et consequenter
[illegible] ac [illegible] in priorem statum libertatis restituere [illegible]
[illegible] sententiam [illegible]. [illegible] sententiam
in pristinum statum [illegible] [illegible] ad [illegible]
[illegible] sententia iudicis.

[illegible] [illegible] [illegible] [illegible] si velit stare [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] in [illegible]
[illegible] [illegible] [illegible]
[illegible] restituendam, qua actio iure communi ex [illegible] [illegible] contractu.
vel actio [illegible] ad [illegible] a venditore excessum pretii [illegible]

[illegible] marito minoris [illegible] emisset si non intervenisset injuria. hęc autem [illegible] [illegible]

[illegible] exercent [illegible] sunt. [illegible]

[illegible] evenerit detrimenti.

[illegible] qui [illegible]

[illegible] actione non [illegible] convenerit, aut alius metum fecerit, [illegible] hoc [illegible] crimine caret [illegible]

[illegible] quemcunque [illegible]

[illegible] amittat. [illegible] restitutione [illegible] exstiterit.

[illegible]

[illegible] merx, et gravamine injuriæ affecta est, utcumque repariat; existimant tamen [illegible] [illegible] non teneri ad restitutionem rei [illegible] [illegible] alienatæ, nisi quandomodo pœnas incipit vel petere.

[illegible] quid possit vocari fœnore. Porro nihil interest, [illegible] [illegible] [illegible] tranquillitate personæ [illegible] [illegible] sententia Theologorum [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ignorantiam in hujusmodi casibus non minus [illegible] [illegible] [illegible] [illegible] inferendi animum haberet [illegible] [illegible] consensu ex- [illegible] vere [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] autem [illegible] [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] sedes.

[illegible]

[illegible]

[illegible] metu ad conventionem compulso, sectio per metum effectum, jurisdictio per metum extorta, et alii.

[illegible] injustus [illegible] incussus ad extorquendum consensum, seu [illegible] in [illegible] Seu [illegible] mulier [illegible]

[illegible] non esset ut mortis, [illegible]

[illegible] injuste incussus, aut modo indicando [illegible] Quamvis enim timor mortis incusserat, [illegible]

[illegible] intelligit [illegible] injuriae rescindere contractum cujus causa injusta fuit, et [illegible]

[illegible]

[illegible] ut videtur

[illegible] ergo [illegible]

[illegible] contractu matrimonium init teneris [illegible]

[illegible]

modum mercator qui merces in mare projicit ad vitandum naufragium proprie [illegible]

[illegible] metu, et metu coactus id facere, licet tempestas [illegible] mare [illegible]

[illegible] matrimonii contracti [illegible]

[illegible] contractum matrimonii et alios antea [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] Ratio [illegible]

[illegible]

[illegible]

[illegible]

Ac etiam iure metus vim habet ad extorquendum consensum, [illegible]

[illegible]

[illegible] sententia [illegible]

[illegible]

[illegible] ex [illegible]

[illegible] ratione [illegible]

[illegible] ratione mihi stricto iure

[illegible]

[illegible]

[illegible] ante omnem iudicis sententiam [illegible] mihi restituere [illegible]

[illegible]

[illegible]

[illegible]

Quod quando ista persona [illegible] liberandum [illegible] offerat, una [illegible] habet, sed ab injustitia [illegible] ille [illegible] retinere valet. [illegible] si decem aure- [illegible] a sicario [illegible] liberta- [illegible] causa contractus, sed solum occasio, [illegible] timor sit ob aliam causam injectus, con- [illegible] ad metum [illegible] contractus [illegible]

[illegible]

Propositio II.

[illegible] causam contractui, [illegible] non [illegible] consensu [illegible] resolutioni ac restitutioni [illegible] metu [illegible]

[illegible] regulis iuris, ubi [illegible]

[illegible] ita inde [illegible]

[illegible]

[illegible] communior sententia [illegible]

[illegible]

[illegible] prævalentis consensu. Ergo valmetus [illegible] adest sufficiens ratio res- [illegible] Præterea, qui metu- [illegible] debet in conscientia reddere [illegible] affinitas alias non [illegible] debet contractus revocare, quamvis vel repetere, quod [illegible]

Hæc tamen ex levi metu, certus sponsam cum [illegible] pro, et postulavit de his quæ cit.

[illegible] solutionis [illegible]

[illegible] in [illegible], quod contradicat [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] vel [illegible] [illegible] [illegible] [illegible] [illegible] aut [illegible] accepisse [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ex mente [illegible] [illegible] [illegible]

[illegible] vero [illegible] contractus rescindibilis, si metus [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] quae [illegible] [illegible] [illegible] commovere solent, ut si filius timens [illegible] [illegible] privatione aut [illegible] [illegible] [illegible] ex contractu, aut [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] uxor [illegible] [illegible] [illegible] aut [illegible] [illegible] [illegible] [illegible] aut ex ipsius mariti [illegible] [illegible] aut [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ex [illegible] [illegible] [illegible] [illegible], quandoque [illegible] [illegible] efficiunt [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] de [illegible] contractu [illegible] explicatione [illegible] [illegible]

Cap. XI

De partitione contractuum, et de quaestionibus quae ejusdem partitionis comites sunt.

[illegible] primo contractus in [illegible] seu expressum, et [illegible], [illegible] contractus [illegible] [illegible] [illegible] [illegible] nec ulla [illegible] [illegible] [illegible]. [illegible] contractus [illegible] ex eo [illegible], [illegible] aut [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] eisdem conditionibus [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] leges aut [illegible] [illegible], aut [illegible] saltem implicita debet retribui.

[illegible] [illegible] in [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], [illegible], [illegible], [illegible], [illegible] [illegible] [illegible] [illegible] [illegible], et [illegible] [illegible] [illegible] [illegible] [illegible]. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] nomen contractui date [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible].

Contractus innominatus [illegible] [illegible] proprio ac [illegible] caret nec habet nisi nomen genericum, et commune [illegible] [illegible] [illegible] contractus innominati quatuor sunt species, nempe do, [illegible] [illegible] [illegible] facias, facio ut des, facio ut facias ex l. [illegible] ff. de praescriptis verbis [illegible] [illegible] sunt: do tibi equum, ut des mihi [illegible]. Do tibi frumentum, ut in mea vinea [illegible] colo agrum tuum, ut [illegible] mihi [illegible] [illegible] tibi ut mihi alimenta [illegible] in contractibus innominatis sub affirmatione comprehenditur etiam negatio, idest sub dando, et faciendo etiam non dando vel non faciendo [illegible] comprehendi [illegible] [illegible] [illegible], et non [illegible] aliquid, quod tibi displicet [illegible] contractus do ut facias [illegible] [illegible], [illegible] [illegible] tunc [illegible] contractus nominatus [illegible] [illegible] [illegible] [illegible] [illegible] ut si pecuniam ego numerem, et tibi det ipse [illegible] si non pecuniam simul et [illegible] [illegible], erit contractus mixtus, [illegible] nomen [illegible] a parte excedente desumetur [illegible] [illegible] mille aureos et equum pro fundo erit emptio: si e contrario equos [illegible] et [illegible] [illegible] contractus nominatus erit ut constat ex [illegible] ad quaestiones de [illegible] [illegible].

[illegible] [illegible] [illegible] contractus innominati [illegible] [illegible] [illegible]

[illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] vices praestiti

Respondeo [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] significat [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible]

[illegible]

[illegible] nactest con-

tractus neutro consensu dissolvere, et revocare.

Alia divisio contractuum est in gratuitos, et onerosos, ut ex [illegible]

[illegible] testamentum legavit [illegible]

[illegible] et quasi [illegible] haeres [illegible]

[illegible] mutuo et [illegible].

Alia ex contractibus ali[illegible]

[illegible] additur accidens, et nulla conditio. Non puri [illegible] aliquod accidens, atq hic [illegible]

[illegible]

[illegible] appositio conditionis, ut promitto aureos [illegible]

[illegible]

[illegible], sub quo contractus obligat [illegible]

[illegible] Sempronio [illegible]

[illegible]

[illegible]

[illegible]

[illegible]
[illegible] ... Ult. de pactis simplex pactum et mera contrahentium conventio [illegible]
[illegible]
[illegible] ... similiter promisit [illegible]
[illegible]
[illegible]
[illegible]
ad eas exequendas debitor per judicem compellatur.

[illegible]
[illegible]
[illegible]
[illegible] ... liberalitate [illegible]
promisit certos ... aureos ... de eodem judice certos aureos [illegible]
[illegible]
[illegible]
[illegible] ... illa [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible] ... foro [illegible]

[illegible] ... plura [illegible]
[illegible]
[illegible] ... contractus [illegible]
et actionem [illegible] in eo genere sortiuntur ut emptio locatio so-
cietas, commodatum, depositum [illegible] contractus etiam innominati [illegible] et [illegible]
[illegible]

[illegible]

[illegible] quod accepit, si a contractu recedere malit.

[illegible] interrogatione ac responsione mutua perficiebant: unde et [illegible]

Hec pacta confirmata [illegible]

[illegible] promissoris subscripto

[illegible] quando nimirum conjuncti sunt [illegible]

[illegible] seu non ex intervallo [illegible]

[illegible]

[illegible] ratio [illegible]

[illegible]

[illegible] debitis alienis aut alia die [illegible]

[illegible] constitutio [illegible]

[illegible] in tenet sententia [illegible]

[illegible]

[illegible] sub [illegible]

[illegible]ditione [illegible] modo [illegible] causa, [illegible] demonstratione. [illegible] conditionalis [illegible] tur, quia sub conditione [illegible] et [illegible] at, seu conditionales propterea nuncupan-

[illegible] [illegible] contingentia [illegible] possunt [illegible] [illegible]

[illegible] [illegible] si pater meus mortuus est, si mater [illegible] [illegible] si non [illegible] conditio de praeterito et [illegible] [illegible] propriè [illegible] ante [illegible] conditio [illegible] quae futurum tempus respicit;

Quaevis conditio [illegible] est impossibilis, aliæ necessaria et aliæ contingentes. Im-possibilis [illegible] de jure [illegible] est contrarius [illegible] si [illegible] [illegible] juris [illegible] et [illegible] si pupillus contrahat sine tutore [illegible] [illegible] contractum celebrare [illegible] [illegible] impossi-bilia [illegible] quoniam in sermone humano [illegible] possumus [illegible] [illegible] quod [illegible] jure possumus [illegible] impossibilitas est ex [illegible] facto. ut si [illegible] [illegible] quae [illegible] [illegible] [illegible] si [illegible].

Conditio necessaria ea est, quae necessario in eum modum, quo enunciatur, eveni-et, v.g. [illegible] cras sol exoriturus sit. Contingens est quae potest evenire vel non evenire atque haec aut dependet ab eo cui imponitur, ut agrum tibi promitto, si hoc anno non [illegible] [illegible] conditio [illegible] [illegible] [illegible] [illegible] ut promitto tibi decem aureos, si [illegible] [illegible] meos numeros [illegible] [illegible] [illegible] in ejus voluntate [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

Propositio 7.

[illegible] conditio [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] contractus [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible].

[illegible] propositio [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], [illegible] [illegible] praesens tempus conditio [illegible] [illegible] [illegible] et si conditio [illegible] [illegible] [illegible] tenere quam [illegible] tenere [illegible] [illegible] [illegible] [illegible] ratio [illegible] consensus [illegible] ac valor hujusmodi contractus tantummodo ad [illegible], aut [illegible] [illegible] [illegible] existentia [illegible] [illegible] [illegible] conditio [illegible] ex nunc [illegible] contractus [illegible] in [illegible] contract [illegible]: si vero non [illegible] conditio [illegible] nunc contractus [illegible] nullus [illegible] non [illegible] conditione nullus [illegible] [illegible] [illegible], ac nullus animus contrahendi. Quare nullo valore [illegible] [illegible] conditio [illegible] [illegible] nunc [illegible], sine [illegible] [illegible] [illegible] [illegible] in [illegible], [illegible] [illegible] [illegible] non [illegible], non [illegible] consensus praestitus [illegible] [illegible] [illegible] ab [illegible] conditione [illegible] [illegible] [illegible] [illegible] [illegible] consensus.

[illegible] communi sententia [illegible] [illegible] [illegible] et consensus [illegible], [illegible] [illegible] [illegible] eo quod necessario [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] sub conditione [illegible], [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]. Ratione [illegible] [illegible] [illegible] [illegible] [illegible], [illegible] [illegible] [illegible] [illegible] [illegible] sunt praesentia in suis [illegible] [illegible] conditio [illegible] [illegible] [illegible] eventus [illegible] [illegible] [illegible] praesens, [illegible] [illegible] [illegible] et [illegible] [illegible] [illegible] hujusmodi [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] contingentes, [illegible] [illegible] [illegible] conditio [illegible] [illegible] [illegible] [illegible] non [illegible] contrahentes, [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] qui [illegible] contrahit [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ex [illegible] qui [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] mortis incertum [illegible] ac [illegible] [illegible] [illegible] [illegible] tempus [illegible] [illegible] [illegible] [illegible] non [illegible] contractus.

Propositio II

[illegible] [illegible] [illegible] [illegible] [illegible] contingente [illegible] [illegible]

[illegible] ad eventum [illegible]. Qui tamen conditionate contraxit, licet ante eventum conditionis rem promissam tradere non teneatur, nihilominus eventum expectare debet nec ante tempus praefinitum promissionem revocare valet. Si non eveniat conditio tempore praestituto, penitus vis contractus exspirat: si vero eveniat, statim [illegible] contractus, atque ex conditionato transit in absolutum absque alio novo consensu [illegible] partes habet.

[illegible] pars prior [illegible] nulla [illegible] conditio [illegible] ex futuro contingenti [illegible] evenire vel non evenire, contrahens [illegible] non [illegible] ante conditionis eventum a consensu suo [illegible] conditione [illegible] contractus [illegible], cuius tamen suspenditur [illegible] efficacia [illegible] dependet. Unde si quis dicat vendo tibi domum meam si intra annum uxorem duxeris, nullo [illegible] contractus [illegible] nisi intra annum conjugio.

Ostenditur altera pars, [illegible] contraxer[illegible] [illegible] [illegible]. [illegible] quemadmodum ex contractu absoluto [illegible] obligatio, qua non [illegible] invitis [illegible]: ita ex contractu conditionato nascitur obligatio conditionata, cujus eo vis [illegible] conditione [illegible] recedere, [illegible] conditionata [illegible] [illegible] [illegible] conditionata obligatio ex [illegible] consensu [illegible], [illegible] consensu [illegible] obligationem [illegible] non [illegible] extinguere [illegible] injuriosus [illegible] contra [illegible] praeter [illegible] conditionato [illegible] consensu [illegible] privari non [illegible].

[illegible] obligatio [illegible] conditione transmittitur, ut [illegible] [illegible] tamen [illegible] [illegible] ut [illegible] 4, [illegible] [illegible]. Rationem discriminis [illegible] de verbis obligationis, quae [illegible]

[illegible] aut [illegible] que [illegible] [illegible].

[illegible] discrimen [illegible] ultima [illegible] contractus [illegible]

[illegible] si non [illegible] contrahente [illegible]

[illegible] heres [illegible] ex se [illegible]

[illegible] cui [illegible] nomine [illegible]

[illegible] v. g. Petrus heres [illegible] Berta [illegible] Petrus [illegible]

[illegible] Berta, que aut [illegible] mortua est, antequam Petrus in mora foret, etiam in hujusmodi casu Petrus heres est.

[illegible] relinquit [illegible]

conditione [illegible] conditio in [illegible]

[illegible] non [illegible] tamen [illegible]

[illegible] obtineat, prestita tamen

cautione quod [illegible]

fructus inde [illegible]

[illegible]

[illegible] non stat per eum, ad quem [illegible]

[illegible] tamen [illegible]

[illegible]

[illegible] non [illegible]

[illegible]

[illegible] contractus [illegible] tamen [illegible] conditionale [illegible]

[illegible] postea, et tradat Paulo, post nos contractus absolutus, licet illicitus sit, tamen priorem conditionalem destruit [illegible] conditione [illegible]

[illegible] conditio [illegible]

[illegible]

Eodem modo si quis contraxerit matrimonium [illegible] [illegible] alia [illegible] concubinatum [illegible] subsistit matrimonium et contractum cum priore [illegible] [illegible] debet tamen promissor [illegible] indemnem praestare promissorium [illegible] [illegible] in uxore [illegible].

Ostendendo [illegible] pars [illegible] ex dictis [illegible]

[illegible] obligare [illegible]

[illegible]

[illegible]

[illegible]

[illegible] contraxit [illegible] conditio [illegible]

[illegible] quando eo modo [illegible] secus vero [illegible]

[illegible] sub conditione si [illegible] exceptione [illegible]

[illegible] [illegible] tunc enim [illegible]

[illegible]

Ostendit [illegible] et ultima [illegible] satis communiter apud theologos [illegible]

[illegible] in pignore, [illegible]

[illegible] sine conditione [illegible]

[illegible]

[illegible]

[illegible]

[illegible] ac [illegible]

[illegible] conditio [illegible] hoc ita volunt ut alter sine alterius consensu contrarium velle non possit [illegible] quod si [illegible] conditione [illegible] novo consensu [illegible] contractus conditionalis [illegible]

[illegible]

[illegible] mente [illegible]

[illegible]

[illegible]

[illegible]

[illegible] patrato [illegible] omnes etiam maritalia contra [illegible] castita-
[illegible]
[illegible]
[illegible] non obstante etiam revocatione consensu

[illegible] sed ad cuius complementum [illegible]
[illegible] alio novo consensu perficiatur [illegible]
[illegible]
in [illegible] ac virtualiter perseverent [illegible]
[illegible] jurisdictio dispensatio [illegible]
[illegible] facta [illegible]

[illegible]

[illegible]
solo consensu sed etiam traditione [illegible] ratio consensus [illegible]
[illegible] tamen [illegible] ut [illegible]

traditio enim sive qua hujusmodi contractus minime perficitur, requirit fieri [illegible]

[illegible]

[illegible] in [illegible]

[illegible] III [illegible]

qui matrimonium contraherent sub conditione [illegible] non [illegible]

[illegible]

[illegible] non [illegible]

[illegible] matrimonii [illegible]

sit consensus de praesenti. Sed ille consensus est de futuro ut Pontifex innuit. Ergo [illegible]

[illegible]

vit ad contrahendum requiritur &c. Ergo posita conditione [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] Pontificem non de matrimonio loqui, sed de sponsalibus conditionate contractis. [illegible]

[illegible] contrahendi, atque ad novum consensum [illegible]

consensus requiritur sponsalia, secundus verum matrimonium

Quaestio III

[illegible]

[illegible]

ex dispositione ultimae voluntatis ex constitutione juris.

Quaeritur primo [illegible] pars. Qui sub conditione [illegible] contrahit [illegible]

[illegible]

+ [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible] sane [illegible]
[illegible]
[illegible]
[illegible]

[illegible] IX

[illegible] in matrimo-
[illegible]
[illegible]
[illegible] generatione [illegible]
[illegible]
[illegible]
[illegible]
[illegible] nam [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]

[illegible]
[illegible]
[illegible]

[illegible] [illegible] requirenti [illegible] [illegible] habere [illegible] intervenien-
ti [illegible] [illegible] [illegible] contrahentes [illegible] aut inviti [illegible] condi-
tio [illegible] [illegible] contractum non [illegible] [illegible] [illegible] matrimonii [illegible] [illegible] inter-
[illegible] non [illegible] [illegible] [illegible] contrahentes satis sensibiliter suum consensum explicent
[illegible] consensum sensibiliter non explicent [illegible] se [illegible] [illegible] [illegible]
[illegible] ad matrimonium [illegible] requisita [illegible] ipsorum contrahentium con-
sensum [illegible] [illegible] quod contrahentes [illegible] [illegible] si [illegible] interrogarentur [illegible]
[illegible] non [illegible] [illegible] [illegible] contrahenti [illegible] matrimonio [illegible] et [illegible]
[illegible] tali consensu matrimonium subsistat

[illegible] [illegible] [illegible] [illegible] [illegible] sententia [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] in utroque [illegible] [illegible] matrimonii [illegible] [illegible]
[illegible] [illegible] [illegible] aut [illegible] [illegible] [illegible] ex conjecturis aut signis
non constat [illegible] [illegible] [illegible] consensus [illegible] in [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] conditione [illegible] [illegible] [illegible] [illegible] non habeat intentione [illegible]
[illegible] juxta leges matrimonium [illegible] juxta leges [illegible] in [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] contrahere [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] Christo Domino [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] non [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] non [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] Baptismo [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] in [illegible] [illegible] [illegible] administratione [illegible] [illegible]
[illegible] qui [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] contractu [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] non
[illegible] [illegible] [illegible] leges [illegible] tunc contractus [illegible] [illegible] [illegible] [illegible]

76 [illegible] autem si [illegible] contra [illegible], quae [illegible] si certa [illegible]
[illegible] requisitam ea [illegible] tunc enim contrahens [illegible] intentionem [illegible] contrahendi se [illegible] generaliter [illegible] intentionem [illegible] proponerent.

[illegible] magis [illegible] in casu [illegible] contrahentes [illegible] et contracta [illegible] conditione [illegible] nec aliter [illegible] contracti [illegible]. In casu autem exteriori [illegible] ex [illegible] quando ex [illegible] conjecturis [illegible] contrahere [illegible] magis [illegible] conditione [illegible] non [illegible], tunc et [illegible] matrimonii [illegible] contrahit [illegible] quia in [illegible] contrahent [illegible] in [illegible] contrahere eo modo, quo [illegible] contrahentes [illegible] esse queat.

[illegible] in matrimoniis [illegible] in [illegible] et [illegible] instrumento [illegible] et [illegible] conditione [illegible] conditionis [illegible] contracti inter [illegible] contrahentes [illegible] contra [illegible] contrahere [illegible] casu ex [illegible] conditionis [illegible] [illegible] non [illegible]

renno

[illegible] se [illegible] cogitare videre velle [illegible] ====

[illegible] autem [illegible] [illegible], in [illegible] [illegible] [illegible] [illegible] etiam in foro conscientiae [illegible] recte praesumuntur in re tanti momenti et adeo [illegible] [illegible] non [illegible] intestatum [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ponere et noluisse [illegible] [illegible] [illegible] [illegible] [illegible] censetur [illegible] ipse [illegible] conditiones [illegible] [illegible] [illegible] [illegible] [illegible], [illegible] ipse animo [illegible] [illegible] [illegible] [illegible] non [illegible], aut [illegible] [illegible] non [illegible] [illegible] [illegible] [illegible] magis [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] actus [illegible] et invalidus existimet.

[illegible] [illegible] de mente contraria testatoris constat in interiori [illegible] non [illegible] [illegible] [illegible] [illegible]. [illegible] [illegible] in [illegible] ante [illegible] [illegible] [illegible] [illegible] conditiones [illegible] [illegible] et [illegible] non [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] lex humana contra consensum [illegible] et [illegible] [illegible] [illegible] [illegible] [illegible] dominium [illegible] [illegible] [illegible] non tamen [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ex [illegible] voluntate et contractu [illegible] [illegible] [illegible] contraria omnino [illegible] [illegible] [illegible] lex [illegible] [illegible] ut consentiat ille [illegible] [illegible] [illegible] [illegible] ante [illegible] [illegible] [illegible] ex testamento non ex [illegible] titulo [illegible] ac [illegible] ex [illegible] [illegible] [illegible] praesumpto.

[illegible]

[illegible] haud interest, et vidua non habet.

[illegible] non [illegible] [illegible] [illegible] [illegible]

[illegible] apud Ferrariu verbo legatus.

[illegible] instructione [illegible] statu [illegible]

[illegible] e contrario [illegible]

[illegible] in pertinence

[illegible] accurate [illegible]

[illegible] contracta [illegible]

[illegible] contracta [illegible]

[illegible] stricte [illegible]

Respondeo [illegible] probata [illegible]

[illegible] obligationi [illegible] contractus [illegible]

[illegible] contractu [illegible]

[illegible] stricte contra [illegible]

Respondeo contractu [illegible]

[illegible] contrahere [illegible]

[illegible]

[illegible] contra [illegible]

[illegible] sententia [illegible]

[illegible] partis [illegible]

[illegible]

[illegible] status [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] donatario [illegible]

[illegible] ut modus [illegible]

[illegible], aut facto impossibilis est dispositio perinde valet, ac si talis modus adjectus non esset.

Ratio, quia modus dispositionis [illegible]

mente non [illegible]

[illegible] heres legantis [illegible]

habet compellendi legatarium ad servandum modum.

[illegible] ex parte [illegible]

to, fuit donatio reipsa concedit [illegible]

ex verbis quibus est usus, partim ex circumstantiis, utrum scilicet modus [illegible] adjectus [illegible]

[illegible]

[illegible] legati [illegible]

[illegible] conditionibus appositus, ut donatio Ecclesiae facta [illegible]

[illegible] in donatione [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] dispositio [illegible] dispositio [illegible]

[illegible]

[illegible]: Dono aut lego Titio equum meum, [illegible]

[illegible]

[illegible] extat res, [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] una, quae intelligere habeo, [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] tibus

Si quis Titio leget decem aureos, quos debet a libero, et Titius aureos centum debeat, utrumque centum aurei legati esse censendi sunt?

Respondent ita: [illegible] demonstratio [illegible] e [illegible] [illegible] [illegible], [illegible] [illegible] [illegible] numerus debet, qui [illegible] [illegible] [illegible] [illegible] demonstrationem [illegible] et tunc [illegible] [illegible] quod demonstratum fuit [illegible] aureorum [illegible] [illegible] conducit

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] in [illegible] et [illegible] [illegible] [illegible], [illegible] si dicas, promitto [illegible] pervenit

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], v. g. aurei decem, vel quindecim, post annum, vel [illegible] [illegible] [illegible] quod [illegible] [illegible] [illegible] valet, [illegible] [illegible] [illegible] [illegible] significationibus [illegible] habent: si ita stipulatus fuero: decem aut quinde- [illegible] decem [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Finis Libri Primi

[illegible]

De contractibus in particulari

[illegible]

Libri 3ⁱ pars prima

De contractibus gratuitis

[illegible]

Caput I

[illegible]

Promissio [illegible]

[illegible]

[illegible] promissio scilicet re tamen, donatio vero ipso actu [illegible].

[illegible] sed vera et sincera voluntas [illegible] promissis. [illegible] intentio se non obligandi [illegible]

[illegible]

[illegible] non consistere cum voluntate [illegible] non obligandi [illegible].

[illegible]

[illegible] hoc omnes [illegible] seq abiq [illegible]

[illegible]

[illegible]

[illegible]

voluisse nisi contenti [illegible] interiori [illegible]

[illegible]

Dicitur 2o advertenta. Requirit nimirum plenam advertentiam ad id, quod ag[illegible] [illegible] ad peccatum mortale ad meritum ad [illegible] [illegible] humanum est. Quare [illegible] qui [illegible] se tacturos esse promittunt examinandum [illegible] aut [illegible] [illegible] [illegible] aut [illegible] [illegible] [illegible] [illegible] in [illegible] consentit

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Dicitur 3o gratuita hoc est liberalis pro [illegible] [illegible] sumitur [illegible] [illegible] [illegible] neque utramque partem ad aliquid adstringat.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] Dei amore [illegible] promissio [illegible]
[illegible] quae data [illegible]
te quod [illegible] a Deo cognitum, et acceptum.

[illegible] promissario [illegible]
[illegible] effert Deus absque injustitia revocari potest. Ita communiter [illegible] promissione [illegible]
[illegible] acceptata [illegible]
[illegible]
[illegible]
[illegible] si alter vicissim se obligare velit [illegible] promissio [illegible]
[illegible]

[illegible] vero [illegible] acceptata a promissario fuit, perfecta, et consummata [illegible]
[illegible]

Apu

Atque haec reperiuntur in promissione acceptata. [illegible]

Ut autem [illegible] promissio acceptata se [illegible] [illegible] regulariter lo[illegible] [illegible]; si promissarius [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] turnitas [illegible] indifferens [illegible] [illegible] vel dissensum significare valeat et [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] rilessu.

[illegible] [illegible] [illegible] [illegible] [illegible] tu' aut decernendum sollicitatio [illegible] [illegible] in [illegible] [illegible] [illegible] suapte natura respectiva [illegible] [illegible] ius et obligatio ex alterius parte [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] tanquam debitum exigi potest.

[illegible] amicis autem praefata jura expresse [illegible] nisi [illegible] sollicitationi [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] Sacrosanctis Ecclesiis [illegible] secundum [illegible] haec est natura sollicitationes [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] ultimo ac postremo de re licita et possibili, promissio [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible]

[illegible] an [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Articulus I.

[illegible]

[illegible]

[illegible] nomine [illegible]

[illegible]

[illegible] absente [illegible]

cerent [illegible] communiter recepta in ꝶ. siquis alii [illegible] de [illegible]

de frequentiores enumero. [illegible], qui juri alterius [illegible] sunt [illegible] sub alterius potestate [illegible]

[illegible]

[illegible]

[illegible] eadem [illegible]

[illegible]

[illegible] pro geratoribus [illegible]

[illegible] juris: unde [illegible] dict: si quis [illegible]

[illegible] qui [illegible] administratores sunt, pro [illegible] stipulari [illegible], [illegible] pro [illegible]

[illegible]

[illegible]

de constituta pecunia

[illegible] ex promissione aut donatione [illegible] [illegible]
in [illegible] [illegible] pro [illegible] socius pro socio uxor pro marito ut [illegible]
[illegible] [illegible]

[illegible] uxor et [illegible] pro [illegible] [illegible]
[illegible] ut omes adducant ex [illegible]
[illegible] [illegible] inter se [illegible] pro an [illegible]
[illegible] pro absent [illegible]
[illegible] in [illegible] [illegible]

[illegible] promissio et [illegible] in [illegible]
modo in [illegible] [illegible] sed [illegible] promissio aut creatio posse
[illegible] ut [illegible] contractus [illegible]
[illegible]
[illegible]
[illegible]
[illegible] promissio [illegible]
tibi me daturum [illegible] promissio tibi [illegible] in absente ejus [illegible]
[illegible]
[illegible] existimant [illegible] posse [illegible]
[illegible] commune [illegible]
[illegible]
[illegible]
[illegible]

[illegible]
[illegible]
[illegible]
[illegible]
[illegible]

[illegible]

[illegible] non [illegible] pro [illegible] non [illegible] [illegible]

[illegible] requisitis ut adsens [illegible] promittat [illegible] ratione [illegible]

[illegible] priori promittenti revocat, contractus revocari potest

[illegible]

[illegible]

[illegible] parte promittentis co-

[illegible]

[illegible] potest non debet. Quod si praesens [illegible] sub onere aliquo sibi injuncto acceptaverit [illegible]

[illegible]

[illegible] ex reg. 135 ff. de reg.

[illegible]

[illegible]

sensu, et revocatione dissolvi poterit.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] con-

[illegible]

[illegible]

[illegible] nomine [illegible]

[illegible] ad [illegible] prom-

[illegible]

[illegible] seu promittentis, ac promissarii in idem [illegible] concurrat.

[illegible]

[illegible]

[illegible] ... dati bona fide ... [illegible]

[illegible]

vocatione [illegible]

[illegible]

10 [illegible] et in ejus

[illegible] non fuerit, ac postea [illegible] pereas [illegible]

[illegible] voluntas [illegible] secari. [illegible]

[illegible]

[illegible]

[illegible]

[illegible] que a testatoris non acquiritur, nisi post

mortem testatoris [illegible]

ferendum rei donate dominium etiamsi [illegible] post suam mortem donatarius acceptet [illegible]

[illegible] post mortem ejus acceptare [illegible] voluntas testatoris

[illegible]

[illegible]

[illegible]

tario, vel promissario acceptata. Heres enim tenetur voluntatem defuncti illesam [illegible]

[illegible] testamentum, licet id [illegible] defun-

[illegible]

[illegible], licet defunctus id [illegible]

[illegible]

[illegible] heres [illegible] defuncti [illegible] voluntatem, ac [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] fiori donatarii [illegible] damni, quod ejus culpa contraxit.

[illegible] nitę sententię Baldovi [illegible]

[illegible]

natoris neu per se, neq per alium donatarius consensit, aut [illegible] [illegible] donatis, ut [illegible] ex capitulo gratiose de rescriptis in [illegible]

[illegible] tarius proprie dicitur.

Attamen specialiter decretum fuit [illegible] intellectu [illegible] Ecclesiasticis beneficiis, [illegible]

[illegible]

Articulus II

[illegible]

[illegible] ... ex lege pacta 6. C. de pactis, sunt enim ... contra ... civiles, idest contra mores ... [illegible]

[illegible] promissiones [illegible] ... in specie promittendi [illegible] in [illegible] ... **III.** [illegible]

[illegible] ... promissio [illegible] ... in promittendo [illegible] ... ex communi sententia [illegible] ... promissio ad [illegible] ... sincere [illegible] factu alterius. Ita qui [illegible] ... eo ipso censetur [illegible] ... canonico [illegible] promittere [illegible] ... et [illegible] ... quamvis [illegible] non exprimat, et quamvis dubium sit [illegible] ... alienum [illegible] manifeste.

[illegible] ... in [illegible] ... [illegible] non [illegible] ... tum [illegible] ... manifesto [illegible] ... promissiones non [illegible] ... non promisit se [illegible] ... ab [illegible]

[illegible] ... sequentes [illegible] exceptiones [illegible] ... [illegible] ... quamvis [illegible] ... promissis teneri [illegible] ... [illegible] promittere [illegible] ... [illegible] factu alterius [illegible] ... [illegible] tamen [illegible] ... [illegible] sententia [illegible] ... [illegible] promissio [illegible] non [illegible] ... promissio [illegible] tamen [illegible] ... quamvis non [illegible] ... promissor [illegible] ... magis fidejussit, et factum alterius [illegible]. [illegible] ... promittere [illegible] ... [illegible] ... promissor [illegible] ... [illegible] ... promissionis causa fuit, cur alterum contractum inierit.

[illegible] ... promittat [illegible] ... quae tamen [illegible] ...

[illegible] tacita [illegible] [illegible] pretereo [illegible] [illegible] [illegible] tunc non occurrit.

[illegible] facta et [illegible]

[illegible] Quamvis [illegible] [illegible] capitulo [illegible] Atqui [illegible] imponit. Hec argumentatio [illegible] ex capitulo xi [illegible] [illegible] sed [illegible] [illegible]

[illegible] [illegible] etiam [illegible] [illegible] ad [illegible] [illegible] ut patet ex [illegible] [illegible] etiam ad [illegible] transmittit ac proinde [illegible] [illegible]

[illegible] ergo qui in promissione [illegible] juxta [illegible] tamen [illegible] graviter inordinatas ergo virtus [illegible] [illegible].

[illegible] propria manu [illegible] in sententia [illegible] obligatio [illegible] in promissione [illegible] ex mente promittentis [illegible].

[illegible] sententia [illegible] ex promissione simplici [illegible] gravi obligatione [illegible].

[illegible]

aut

[illegible]

[illegible] a voluntate legis [illegible] aut [illegible] [illegible] ita [illegible] operatione [illegible] materia [illegible] obligatio [illegible] legislator [illegible] tet, censeat legis sue obligatio [illegible] conformare materie precepti.

[illegible]

[illegible]

[illegible]

[illegible] sententia [illegible] [illegible] promissans [illegible]

mandari debet. Sto promissionis obligatio nascit. [illegible] [illegible] Promissio enim non nascit [illegible] ex intentione [illegible] expresse [illegible] habuit ille qui promisit [illegible] intentio [illegible] [illegible] et promissarii [illegible] ex promissarii dispositione [illegible] circumstantiis [illegible] [illegible] praeter [illegible] intentionem [illegible] interpretata non [illegible] [illegible]

[illegible] in genere [illegible] in specie [illegible] si menti occurrerent, judicio [illegible] [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Caput XI
De Donatione.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] mortis periculo dicat si in praelio mor[illegible]

te opto dari tibi pecuniam in hac crumena contentam, morte non subsecuta evanescit [illegible]

[illegible] donatio tamen [illegible]

[illegible]

Donationis inter vivos, et causa mortis haec sunt discrimina. Primo in [illegible]

[illegible] vindicat is,

[illegible]

[illegible]

[illegible]

[illegible]

2do donatio inter vivos natura sua irrevocabilis est exceptis nonnullis casi[illegible]

[illegible] per revocari a donatore valet

ut liquet ex le. 4. ff. de alimentis [illegible] dispositionibus [illegible]

[illegible]

[illegible] consulti minime vero donatio causa mortis

[illegible] donatio

[illegible] inter vivos ad quid absolute fecisse, ac proin

[illegible] donatio inter coniuges [illegible]

[illegible]

intentione, aut verbis donatoris colligi potest, licet Glossa communiter recepta in le. ultima

Co. de donatione [illegible] donationem inter vivos

[illegible] mortis

fieri cum expressa eiusdem mortis mentione debet [illegible]

[illegible]

termino et [illegible]

Donatio [illegible]

ma seu morim constitutionis suæ, [illegible], ut donatarius donationem mortis causa sibi factam acceptet vel, se vel alii, cui [illegible] [illegible] [illegible] [illegible] tit. [illegible] Bartolo sive [illegible] suos effectus conserit cum [illegible] [illegible] maxime legato sicut [illegible] [illegible] institutionis de donationibus [illegible] in donatione [illegible] mortis [illegible] [illegible] capax sit donatarius, sicut et in legato [illegible] capax sit legatarius [illegible] tempus mortis non ante tempus [illegible] dispositio facta est juxta l. minoris ff. sub eod. tit. Quin et capacitas ejus, qui mortis causa donat, [illegible] et capacitas ejus qui legat mortis tempore consideratur [illegible] de legatis [illegible] tamen mortis causa donatio a legato, quia legatum [illegible] tanquam accessorium a principali: quare infirmato testamento corruit etiam legatum, subsistente vero testamento legatum ab herede [illegible] non est antequam [illegible] [illegible] donatio causa mortis a testamento, et hereditatis aditione penitus independens est [illegible] ipsa donantis morte [illegible], et confirmatur.

Quatuor conditiones ad donationes valere necessariæ sunt quarum prima se tenet ex parte donatoris, secunda ex parte donatarii, tertia ex parte rei quæ donatur, [illegible] ex [illegible] solemnitate, quæ nisi accedant, [illegible] est et nulla donatio. Singulas conditiones [illegible] ac breviter evolvamus.

Articulus I

Quinam donare valeant

[illegible] donationis [illegible] donare, [illegible] [illegible] simul et dominium, et liberam [illegible] non [illegible] administrationem [illegible] [illegible] nec dominium sine administratione nec administratio [illegible] dominio [illegible]. Et [illegible] [illegible] [illegible] ad contrahendum [illegible] [illegible] [illegible] etiam ad donandum? [illegible] [illegible] qui donat rei dominium transfert in donatarium [illegible] non potest, qui non habet simul et dominium et administrationem [illegible] [illegible] [illegible] [illegible] administrationi libera, et dominio [illegible] [illegible], [illegible] [illegible] [illegible] a lege humana [illegible] [illegible] ex parte donatoris [illegible] donandum. Si vero alterutrum [illegible] [illegible] non [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] exceptis [illegible]

[illegible]

Corollarium primum. Qui rationis usu carent, et senes qui iam decrepiti [illegible] [illegible] donare non possunt. Item prohibentur donare [illegible] ut e communis sententia [illegible] ex lege finali C. De testamento militis, ubi haec ratio [illegible] sanae mentis [illegible] [illegible]; et surdus [illegible] mutus surdusque simul, qui nec voce nec scriptura aperire propriam voluntatem possunt, donare vetantur.

Corollarium [illegible] filiifamilias non possunt [illegible] donare ex bonis [illegible] [illegible] absque patris expresso vel tacito consensu. Attamen si pater [illegible] in Academia aut [illegible] [illegible] versanti sumptus mittat [illegible] et [illegible] ei [illegible] ad honestas animi [illegible] [illegible] et donationes [illegible] quas [illegible] [illegible] et conditionis [illegible] solent. Si vero pater filio versanti [illegible] in studio litterarum [illegible] tanquam competentia alimenta [illegible] et [illegible], quicquid deinde propria parsimonia ex victu aut vestitu [illegible] subtrahit, arbitratu suo donare [illegible] [illegible] donare potest sine ullo restitutionis [illegible] [illegible], nisi contestatam [illegible] patris voluntate. [illegible] filiifamilias ex bonis suis adventitiis [illegible] administratio et usufructus ad parente pertinet, contra [illegible] [illegible] donatio infirma et [illegible] [illegible] a patre [illegible] [illegible] [illegible]

[illegible]

[illegible]

[illegible]

[illegible] etiam invito patre donare potest, [illegible]

[illegible]

[illegible]

[illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] patrimonii, causa donandi, [illegible]

Ab hac ipsa etiam tutores et curatores [illegible] [illegible]

[illegible]

[illegible] [illegible] plures [illegible] De [illegible] [illegible]

[illegible] non liberaliter proprie donare [illegible]

[illegible]

[illegible]

[illegible]

[illegible] ad prudentem, honestamque administrationem [illegible]

[illegible]

[illegible]

[illegible]

[illegible] requirenti [illegible]

[illegible] conveniat ad communes [illegible]

[illegible] sint magna eorum communitatis. id enim quod ad omnes pertinet, non debet in unius partis utilitatem deriuari

[illegible] maritus [illegible] Uxore donare saltem absque legitima causa, [illegible] uxor non est rationabiliter inuita. maritus enim [illegible] tate non continet potestatem donandi, cum donatio non est administratio rei, sed amissio [illegible]

[illegible]

[illegible] aduersus [illegible] familiae [illegible]

[illegible]

[illegible]

[illegible] maritus [illegible] abundantia [illegible]

[illegible]

[illegible] remuneratoriae [illegible], maritus [illegible] auaritiae [illegible]

[illegible] caueant tamen confessarii ne [illegible]

[illegible]

[illegible]

[illegible] vere [illegible] valent donatio interdicta, imo et revunie. [illegible] ad merita [illegible]

[illegible] sunt [illegible] facta sunt [illegible] nulli [illegible] et [illegible] de rebus ecclesiæ nonali-

nandis [illegible] causa [illegible] Domino [illegible] aut, et [illegible] ad

[illegible] habent [illegible] VIII. [illegible] anno [illegible]

[illegible] donationes [illegible] generalem [illegible] et [illegible] pro-

bata fuerit. Sed hic [illegible] locum habere [illegible] cum de administratore diceremus

[illegible] præsens inferre licet [illegible] dicta est donare, eo prohibitione non com-

prehendi donationes remuneratorias. [illegible] donationes [illegible] conversatio

a donationem proprietate [illegible] ex leg. 1 ff. de donationibus ubi hæc habentur verba: — si dat

aliquis ea mente ut statim velit accipientis fieri, nec ullo casu ad se reverti, propter nullam

aliam causam facit, quam ut liberalitatem, et munificentiam exerceat, hæc proprie donatio appe-

latur. [illegible] proprie [illegible] non [illegible]

[illegible]

[illegible]

tiret, et [illegible]

[illegible] ut [illegible] fundamento [illegible] remunera-

[illegible] remuneratione [illegible]

[illegible] remuneratio [illegible] remuneratoria [illegible] prudentiæ excedat donatio secun-

dum excessum erit prohibita.

Articulus II.

Quinam sint ad recipiendas donationes idonei

[illegible] donationis [illegible] et [illegible] recipere non prohibentur. [illegible]

[illegible]

[illegible] hic dicti: monitis quid nos recept-

[illegible]

[illegible] ad donationes prohibuerint [illegible] donatio [illegible]

[illegible] evidentes, ne concordia [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] riservata [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] de capite [illegible] [illegible]

inter virum et uxorem [illegible] [illegible] [illegible] [illegible] — donatio [illegible] [illegible] **matrimonio** [illegible] [illegible] [illegible]

è facta ... firmitatem non habet, nisi donator in vita [illegible] [illegible] tamen [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] — Convenant

[illegible] [illegible] [illegible] [illegible] — [illegible] [illegible], che si faranno tra marito e

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], nella [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] non [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], intendi la volontà del

donante se o in vita o in morte avere [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] fatto menzione del-

la donazione —

[illegible] [illegible] [illegible] [illegible] [illegible], [illegible] inter [illegible] [illegible] cum conditione ut [illegible]

[illegible] non ante [illegible] [illegible] [illegible], [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ante

nuptias [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

contrario donatio facta [illegible] [illegible] in tempus [illegible] [illegible] **non** erit invalida [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] non [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] de contrahendo [illegible] [illegible] [illegible] [illegible] intentio [illegible] non donandi [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] attamen donatio [illegible] [illegible]

[illegible] [illegible] morte donantis [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

donationibus inter virum et uxorem.

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] donatio inter coniuges [illegible] [illegible] [illegible] [illegible] non revocatur [illegible] [illegible]

[illegible] [illegible] [illegible] alter [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

non [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] hereditatem, [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] quæ alias id obtinuisset, vel quia

[illegible]

mento substituta erat, vel quia ab intestato debebat succedere [illegible] si donatarius non trahat ex donatione [illegible] etsi donator inde pauperior evadat [illegible] si conjux conjugi donet ea lege ut res donata penes donatarium non maneat sed alteri [illegible] ex l. [illegible] ff de jure dotium, aut si donatio fiat ad reficiendas [illegible] incendio [illegible] [illegible] l. [illegible] ff de donat. inter virum et uxorem aut denique si donatarius rem sibi donatam inutiliter exponat [illegible] tamen si vir uxori dotem promissam remittat juxta l. [illegible] si constante [illegible] de donat. ante nuptias vel si uxori [illegible] causa remunerationis [illegible] quia [illegible] nobilis [illegible] nupsit.

[illegible] donationibus inter virum et uxorem [illegible] [illegible] quae a Patre [illegible] [illegible] constituto. [illegible] donationes sunt ad [illegible] revocabiles [illegible] de [illegible] donat. [illegible] [illegible] sub [illegible] Patris [illegible] veluti persona cum Patre quantum ad civiles effectus [illegible] Pater [illegible] [illegible] ipsi donare [illegible] tamen res donatas [illegible] a Patre [illegible] [illegible] inter [illegible] donatio confirmatur [illegible] morte donantis perinde ac si ab initio [illegible] [illegible] ex l. [illegible] [illegible] ex l. sive emancipatus C. de donat. quia [illegible] emancipatus [illegible] Patria potestas [illegible] [illegible] [illegible] communis sententia [illegible].

[illegible] donatio Patris filio non emancipato facta [illegible] valet si filio donet ob causam [illegible] remunerationis ad nuptias in [illegible] ad Religionis ingressum [illegible] aut [illegible] [illegible] quod in bonis ejus adventitiis [illegible] et [illegible] le [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] donatio inter [illegible] [illegible] [illegible] valere [illegible] inter Parente [illegible]

[illegible] Patria potestate constituto [illegible] donatione a Patre facta filio emancipato [illegible] [illegible] de donat. [illegible] valere donati [illegible] [illegible] a Patre [illegible] [illegible] consideratione in ordine ad effectus civiles [illegible] valere donatio Patris filio [illegible] [illegible] sub ejus potestate non e[st].

[illegible]

[illegible]

[illegible] *Donat.* [illegible]

[illegible]

[illegible] quanto [illegible]

[illegible]

[illegible]

[illegible] III

Quantum possit [illegible] orare

[illegible] *solemnitates*

[illegible] *orat.* [illegible]

[illegible] 51 [illegible]

[illegible]

[illegible]

[illegible] orator [illegible]

[illegible] orator [illegible]

[illegible] aut [illegible] aut quid simile [illegible] orationis [illegible]

[illegible] orationis [illegible]

[illegible] inde creari possit

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] Quando [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

ne qua sua curat uter iis ex omnia bona tam presentia quam futura si iure [illegible] tiones unitaque oppositum servaverit Ita spirituare se stabilitate testamenti servatis solum elementis necessariis quae per se malum seu peccatum non est cum quilibet possit nolle testari et nolle revocare in quo donavit.

Tertio spectato iure communi nulla aut saltem parum excepta revocabilis est donatio inter vivos quae quingentos solidos seu quingentos nummos aureos hungaricos aut [illegible] excedit, sive uni sive pluribus ea donatio fiat, nisi precesserit [illegible] insinuatione ex lege penultima C. de donationibus. quod ideo statutum est ne homines metu vel fraude vel inconsulta temeritate impulsi se donationibus exhaurirent et ne aliis [illegible] cui inconvenienti obviare debet. Respondeo bene monitum.

[illegible]

[illegible]

20[illegible] [illegible] bonorum ad [illegible] [illegible] oratio [illegible] juxta illud Christi: [illegible]

[illegible] [illegible] [illegible] [illegible] eleemosynas

nesciat sinistra tua quid faciat dextera tua, ut sit eleemosyna tua in abscondito, et Pater tuus qui

videt in abscondito reddet tibi. Quod [illegible] secreto [illegible] non [illegible]

sed si [illegible] [illegible] in actis publicis [illegible]

eleemosyna [illegible] [illegible] [illegible] hujusmodi christianae religionis [illegible]

[illegible].

[illegible] [illegible] donatio inter vivos [illegible] conditionibus instructa [illegible]

[illegible] Respondeo generaliter loquendo negative [illegible], ut non [illegible] donatarius [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] per donationem revocat [illegible] [illegible] [illegible] generaliter, omnes

[illegible] donationes [illegible] [illegible] [illegible] manere.

[illegible] tamen [illegible] causis simplex donatio [illegible] [illegible]

[illegible] [illegible] donationis causa [illegible] [illegible] postea suscepta [illegible]

[illegible] donatio sit [illegible] contra officium [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] donatario [illegible] [illegible] [illegible] donazione [illegible] il suo effetto

[illegible] [illegible] [illegible] ingratitudo donatarii sit [illegible] ad revocandam do-

nationem idonea.

Post [illegible] [illegible] [illegible] [illegible] [illegible] casus [illegible]

[illegible] enumerasse [illegible] [illegible] revocandi donationem [illegible] donatarius in [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] suis [illegible]

[illegible] substantiae [illegible] [illegible] [illegible] intellexit [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] donationis [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

-ise [illegible] donatore [illegible] Pontifex [illegible] ultimo [illegible] causa con-
sa [illegible] non e verbo offendat, [illegible] dixit: si gravis atroces injurias [illegible] in-
currerit. [illegible] causa si maximas injurias [illegible], de quolibet [illegible] vel quocunque
demum instrumento fiat [illegible] de manuum injectione violenta in clericum [illegible]
excommunicationem. Tertius casus si jacturam molem ex [illegible] ingerat, [illegible]
ut non sufficiat quodcunque detrimentum [illegible] efficit requisitum
damnum quod arbitrio judicis satis esse videat. Porro ea verba in lege [illegible] ex insidiis suis, omis-
sa merito fuerunt in jure canonico lo. cit. quia necesse non est [illegible] illud per insidias inferri.
Quartus casus habet si sive donatarius per se sive per alium periculum donatori [illegible]. Quintus casus, si neque
donatarius implere velit conventiones seu promissiones ad quae aut verbo, aut scripto se in
natione devinxit, in cit. capitu. ultimo de donat. [illegible] est, [illegible] magis per-
tinet ad justitiam ex qua donatarius compelli [illegible] ad servanda promissa. At-
tamen propter obligationem illam contrariam [illegible] etiam aliqua ingratitudinis.

[illegible] has species ingratit. [illegible] sequentia advertenda sunt. Primo
semper requiritur ut interveniat culpa donatarii si enim sive donatorem in fama aut honor-
e laedat si accuset quando accusare debet [illegible] se defendendo ei vitae periculum afferat vel
justitiam [illegible] aut promissa non praestet non poterit [illegible] titulo donatio revocari, quia revoca-
tio haec est poena poena vero sine culpa non incurritur. Idem est si tempore quo injuriam intulit,
donationem [illegible] donatarius ignorabat [illegible]
notitia ingratitudo esse nequit.

[illegible]
[illegible]
[illegible] successores transire [illegible]
[illegible] ingratitudinem [illegible]
non [illegible]
natoris haeredes posse [illegible] donatam revocationem [illegible]
[illegible] ab ipso donatore [illegible] haeredes, [illegible] donatarii actio [illegible]

100 [illegible] ... sit [illegible] ... non [illegible] ... item
[illegible] ... juxta [illegible] ... donatione [illegible] ... non
qui a lite [illegible] perceptis sunt.

Inquires [illegible] ... natis [illegible] ... nati.

[illegible] donatione [illegible] ... revocari [illegible] ... ex le
si unquam de revocandis [illegible] ... donatoris [illegible]
[illegible] ... ex communi sententia donator [illegible] ... nati [illegible]
[illegible] ... ex [illegible] ... revocationem
revocare [illegible] tametsi ei nascantur liberi. [illegible] tamen [illegible] ipsi [illegible] materna [illegible] revocare
quatenus donatio eis inofficiosa [illegible] quatenus legitimam [illegible] salvo
non [illegible] evehere ius [illegible] post [illegible] personam [illegible]

Quod si donatio [illegible] confirmata fuerit adhuc [illegible]
si [illegible] non [illegible] sicut enim in ipsa donatione [illegible] proponit [illegible]
[illegible] ita in [illegible] cum [illegible] donationem [illegible] con
firmare secundum [illegible] donatio [illegible] ac proinde [illegible]
si proles nata non fuerit

Qui si nati postea filii, vivo [illegible] mortui [illegible]

[illegible] qui affirmant [illegible] de donatione [illegible]
[illegible] non [illegible] donantis [illegible] semper [illegible] putant [illegible]
[illegible] natis filius [illegible] revocat [illegible] revocationem [illegible] posset [illegible] proponit [illegible]
[illegible] nata prole, et [illegible] liberis [illegible] donato [illegible]
[illegible] ex [illegible] coniunctim [illegible]
[illegible] nascentibus filiis non [illegible] donatio [illegible] sit, sed [illegible]
[illegible] ac proinde [illegible] [illegible] conservat [illegible] ita [illegible]
[illegible] futuros [illegible] donatori [illegible] nato [illegible]
[illegible] consequenti [illegible] absque [illegible] sumento [illegible]

[illegible] Ergo mortua [illegible] donatione [illegible] quis [illegible] ad [illegible] filio nonfuit [illegible] est [illegible] in le[illegible] [illegible] si Patri nascat filius post condit[illegible] [illegible] quo extraneum heredem instituerat, [illegible] Patre moriat[illegible] adhuc [illegible] sustinet[illegible] Ratio hec videtur esse, quia ab initio [illegible] voluit te[illegible] [illegible] valere quo [illegible] potest.

Ex hac [illegible] [illegible] unus in quo [illegible] tuis [illegible] potest Pater ob [illegible] nativitatem revocare donationem antea factam quando scilicet tantas pro [illegible] expensas fecit ut eas si prævidisset nunquam donasset. [illegible] ad alendos, ad educandos, [illegible] liberos post donationem natos non parvas impenderit [illegible] [illegible] donationem non [illegible] Ratio est quia donatio non ideo solum [illegible] non [illegible] posse pro [illegible] [illegible] [illegible] utilitati prospicerent [illegible] etiam [illegible] magis, et sibimetipsi [illegible] qui prolis occasione [illegible] magnos sumptus facere deberet. Si ergo [illegible] sumptus fecit, poterit etiam mortua prole [illegible] jure suo quia [illegible] fuit casus, [illegible] capitaj quod presumit [illegible] donatione comprehendere [illegible]

[illegible] si filius post donationem natus [illegible] [illegible] Parenti [illegible] donationem non revocavit [illegible] [illegible] distinctione respondet [illegible] [illegible] [illegible] revocare [illegible] [illegible] [illegible] [illegible] [illegible] revocare non [illegible] [illegible] [illegible] Si vero Pater [illegible] nativitate non [illegible] [illegible] donatione agere [illegible] quia non censet [illegible] a Patre [illegible] [illegible] presumit non modo sibi [illegible] [illegible] [illegible] [illegible] consuleret.

[illegible] post donationem proles [illegible] nascatur

[illegible] non [illegible] in donatione [illegible] [illegible] quia extraordinarius [illegible] non [illegible] contingere [illegible] non tantum [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] non tamen ex [illegible] procreavit, et cum matre [illegible] [illegible] [illegible] [illegible] proles [illegible] [illegible] [illegible] [illegible]

[illegible] ad [illegible] pro [illegible] legitima. [illegible]

[illegible]

[illegible] non posse [illegible]

[illegible]

[illegible] non [illegible] in [illegible]

[illegible]

[illegible] non [illegible]

[illegible] non [illegible]

[illegible]

[illegible] in [illegible] et [illegible] non [illegible]

[illegible] integre [illegible]

[illegible] aute [illegible]

[illegible], quia tunc primum [illegible] legitima debet

Caput III

De [illegible]

Nunc ad [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

ienq tranquillā postulat testatores non sciant, etiamsi post intemperie [illegible] diei extremæ differendi conjectus in quo turbatus animus et mens exagitata impar est ad illud prudenter conficiendum. Verendum sane est ne multorum animæ quæ ex tanta negligentia et dilatione culpabiliter deficiunt rationem reddere judici Christo debeant, ut animadvertit [illegible] theologorum [illegible]nes a S. Thoma in sua exquisita methodo ad jus [illegible] cap. 12. Sed ad rem. Per ultimam voluntatem venit illa dispositio qua quis antequam ex hoc mundo decedat legitime constituit quid de rebus suis post mortem suam fieri velit. Ultimæ dispositionis species aut quasi species præter donationem causa mortis de qua jam dictum est sunt testamentum quod principatum tenet, codicillus et fideicommissum. De singulis ea duntaxat edisseram, quæ pro moderando conscientiæ foro necessaria judicavero.

Articulus I.

De testamento

Testamentum ex eo appellatur [illegible] testatio mentis [illegible] testamentum [illegible] est [illegible] testamentis voluntatis nostræ justa sententia [illegible] in heredis institutione et omnibus [illegible] testamentum valere [illegible] habet.

Dicitur sententia nostræ, seu sententia [illegible] legitima et juri conformis [illegible] terari eo modo quo [illegible] cum [illegible] legem [illegible] hereditas quas [illegible] testamentum [illegible] ultima voluntas [illegible] mors [illegible] testamentum et mors interce[illegible] testamentum enim in mortuis confirmatum [illegible] qui testator [illegible] heredis institutione [illegible] testamenti [illegible] ultima voluntas continet [illegible] nominatione successoris in [illegible] qui testator [illegible].

Testamentum dividitur in solemne quod [illegible] perfectum vocatur [illegible]

solemnitate, [illegible] a jure [illegible] et in [illegible] [illegible] ex [illegible] ratione [illegible] tamen [illegible] [illegible], qui non tam plena et perfecta solemnitas adhibeat.

[illegible] in scriptis seu clausum et nuncupativum seu apertum. [illegible] quo testator voluntatem suam scripto [illegible] adhibitis testibus qui subscribunt, et sigilla [illegible] [illegible]. [illegible] sola [illegible] probat [illegible] scriptum, et testamentum [illegible] clausum [illegible] et [illegible] [illegible] quod [illegible] viva voce a testatore coram [illegible] [illegible]. Quorum [illegible] hoc nuncupativum coram testibus a [illegible] Notario [illegible] [illegible] [illegible] tamen [illegible] [illegible] [illegible] [illegible] [illegible] tantum ad majorem probationem et securitatem [illegible] notarii, ubi testes [illegible] [illegible] [illegible] [illegible] [illegible] coram [illegible] [illegible] testes [illegible] [illegible] [illegible] Notarii [illegible] instrumentum abunde supplet, prout [illegible] [illegible] [illegible] instrumentorum, [illegible] [illegible] [illegible] de his scripturis, [illegible] [illegible] facilius probari possit [illegible] [illegible] [illegible] [illegible] probatione.

Sectio I

Quæ in testamentis solemnitates requirant, an, et quando solemnitatis prescriptæ defectus testamentum valori noceat.

[illegible] omni testamentis [illegible] [illegible] clausum [illegible] [illegible] [illegible] solemnitas [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] nomen testatoris manu scriptum [illegible] [illegible] manu [illegible] [illegible] [illegible] testamentum [illegible] fuerit clausum [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] praesentia [illegible] testatore [illegible] [illegible] [illegible] [illegible] [illegible] ac profitetur [illegible] [illegible] testamentum [illegible] clausum [illegible]. [illegible] testator coram [illegible] [illegible] manu [illegible] [illegible] in exteriori parte [illegible] [illegible] [illegible] scribere nesciret [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] testes [illegible] manu subscribant [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] tempore, [illegible] [illegible] [illegible] [illegible] [illegible] testamentis

Ad testamentum [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] ne le [illegible] nelli testamenti [illegible] legato [illegible] [illegible] 509

[illegible]

[illegible] solemnitates [illegible] [illegible] ita [illegible] Lini [illegible] [illegible] [illegible] leges et consuetudines. [illegible] nostre Patrie [illegible] [illegible] [illegible] testamenti non siino [illegible] se non saranno [illegible] la presenza di sette testimoni nella città e luoghi murati, e [illegible] nelle ville overo non saranno fatti [illegible] ne [illegible] testimoni [illegible] conforme alle leggi Venete o [illegible] non saranno fatti [illegible] sono intervenute le solennità ricercate da dette leggi [illegible] nelle [illegible] testamenti [illegible] mano de [illegible] terminato che [illegible] testamenti non [illegible] se non saranno [illegible] e publicati alla presenza di cinque testimoni, e [illegible] consegnati al Nodaro nel termine di [illegible] dopo la morte del testatore e [illegible] [illegible] con le forme [illegible] termine d'anno [illegible] quel tempo passato non [illegible] [illegible] ne restano [illegible] in [illegible] una [illegible] [illegible] in [illegible]

I [illegible] testes in testamento [illegible] [illegible] [illegible] [illegible] lege [illegible] ad testandum sunt. [illegible] 6 [illegible] de testamentis [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] intestati et improbi [illegible] [illegible] [illegible] [illegible] sunt [illegible] [illegible] [illegible] [illegible] [illegible] non [illegible] testis [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] testatoris potestate sunt [illegible] [illegible] [illegible] [illegible] [illegible] testamentum [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] testamento [illegible] [illegible] [illegible] testamenta facere possunt tales [illegible] testes in [illegible] testamenti [illegible] [illegible] [illegible]

Se-

226 [illegible] testamentis [illegible] testamenti [illegible] legari [illegible]
[illegible] testamenti [illegible] testamentis [illegible]
[illegible] ex communi [illegible] testamenti non [illegible]
[illegible] intestatus [illegible] aut testamentum [illegible]
[illegible] impedimenti latentis [illegible].

[illegible] testamento [illegible] aut [illegible] solemni-
tatis [illegible] testator [illegible] requirit, aut [illegible]
[illegible] testatoris [illegible].

[illegible] testator [illegible]
[illegible]

[illegible] testamento [illegible] hereditatem
[illegible]
[illegible]
[illegible] testamentum [illegible]
[illegible] heres [illegible] testamenti [illegible]
[illegible] testamenti [illegible]

[illegible] testamento [illegible] testator [illegible]
[illegible]

[illegible]
[illegible] testatoris [illegible]
[illegible] testatoris [illegible] testamenti [illegible]
[illegible] testamenti [illegible]
[illegible] voluntate testatoris [illegible]

[illegible]
[illegible]
[illegible] testamento [illegible]
[illegible] testator [illegible]

[illegible] et eius interesset [illegible] jure [illegible] testator [illegible] alio herede instituere.

[illegible] testamentum si non extat persona, que instituitur heres.

[illegible] in testamento [illegible] in institutione [illegible] Quod si testator [illegible] legata [illegible] faciat scriptura, aut [illegible] testamenti [illegible] efficiat [illegible] consentire [illegible] testator [illegible] in testamento [illegible] heres [illegible] nominare [illegible] heres [illegible] de testamentis [illegible] testamentum si heredis [illegible] arbitrio [illegible] Petrus [illegible] nominaverit [illegible] institutio [illegible] de heredibus instituendis

[illegible] testamentum [illegible] testator [illegible] conditione [illegible] heredem instituo si [illegible] heredem instituerit [illegible] conditio de futuro, aut [illegible] de futura successione [illegible] efficaciter [illegible] captatoria [illegible] quoniam [illegible] affectione se heredes instituant, ita tamen [illegible] voluntatem seu testamentum postea mutare.

Sæpe accidit in praxi ut testamenta [illegible] in solemnitate [illegible] in [illegible] sententias dissidunt. [illegible] testamentum aliqua [illegible] solemnitate carens [illegible] heredes et legatarios [illegible] testamenti [illegible] ante sententiam [illegible] heredi ab intestato [illegible] ex [illegible] testamento [illegible]

[illegible] sententia [illegible] in [illegible] solemnitate [illegible] ab intestato heres [illegible] hereditate aut [illegible] repetere [illegible]

que

qui [illegible] imperie [illegible] res mentes instituti sunt. hereditatem, aut legatum reddere debeat, nisi per sententiam judicii ei adjudicata fuerint.

[illegible] inter utramque [illegible] differentia testamentum [illegible] solemne [illegible] legatario [illegible] obligationem [illegible] et [illegible] sententia judicis [illegible]. Ideo [illegible] de hujusmodi testamenti [illegible] tuta conscientia retinere [illegible] a judice [illegible] hæres ab intestato [illegible] restitui debet post sententiam. Ideo [illegible] testamentum [illegible] in foro conscientiæ, [illegible] non [illegible], sed per judicem infirmari valet. Ita Sanchez, Laymann, [illegible], et alii, qui [illegible] conciliari posse [illegible] oppositam. Quid in [illegible] nos sentiamus [illegible] servare.

Propositio.

Testamentum cui [illegible] solemnitas deest, quam [illegible] particulare jus ad ejus valorem ac [illegible] requirit, [illegible] in [illegible] conscientiæ valere.

[illegible], qui in [illegible] auctoritatem [illegible] testamentum [illegible] leges civiles [illegible] pro utroque foro, [illegible] expedire [illegible] [illegible] contractus etiam [illegible] testamentum non temere inconsiderate, sed [illegible] et [illegible] in [illegible] contrahendo [illegible] Barocho [illegible] [illegible]

[illegible]

[illegible] testamentum [illegible] [illegible]

testamento voluntatem ejus ... tenere non ... [illegible] ... 53 [illegible]
... testamentum ... pronunciat. ... in testamento ...
... nullum ... Quas cesareas leges constitutiones nostrae ... ut liquet ex ... supra
relatis.

At hujus argumenti ... intelligat hic ... sunt he-
res ... parates sunt ... non solum in externo
foro, sed etiam in foro conscientiae ... debent ante quamcunque judicis senten-
tiam. Praeterea leges illae non ... in ... seculiset
... sed in generali ... periculo ... ad ... tempus ...
... [illegible] ... periculum ... [illegible]
... [illegible] ... non valeat ...
... non interveniat ... [illegible] ...
... [illegible] ... fuerit ... [illegible]
... [illegible] ... ita matrimonium ... [illegible] ...
... [illegible]

... [illegible] ...
... [illegible] ... in utroque foro ... [illegible]
... [illegible] ... poena ... [illegible]
... [illegible] ... testamentum ... [illegible]
... [illegible] ...
... [illegible] ... testamenti ... [illegible]
... [illegible] ...
... [illegible] ... testamentum ... [illegible]
... [illegible] ...
... leges ... [illegible] ...
... intentat ... possessor ... [illegible]
... quod in foro conscientiae auferri non possit ... [illegible]

120 fuere [illegible] testamentum [illegible] Deo [illegible] et non [illegible] peccato [illegible]

[illegible] petere quod velit. Quare [illegible] bona [illegible] magis [illegible]

[illegible] et non intentis [illegible] intentis [illegible] conscientiis [illegible]

et manifesta [illegible] injustitia [illegible]

Omnes solemnitates illae a jure praescriptae non solum requiruntur ad [illegible] externo foro [illegible] ut autumant [illegible] sed etiam pro forma substantiali et [illegible] [illegible] ergo ea solemnitate deficiente caruit testamentum sua forma substantiali [illegible] [illegible]. [illegible] patet ex [illegible] auctoritate legis et exemplo matrimonii [illegible] quod aliis verbis [illegible] Tridentinum Concilium [illegible] matrimonia [illegible] irritavit ultimas voluntates [illegible] forma [illegible] [illegible] [illegible] in utrumque [illegible] non solemni testamento [illegible] irritationes [illegible] [illegible] [illegible] et personas, et bona subditorum [illegible] et eorum dominium impedire, ac transferre possit prout expediens communi bono [illegible] [illegible] legis [illegible] absolute atque [illegible] [illegible] et [illegible] [illegible] potestati [illegible] [illegible] [illegible] [illegible] solemnitate [illegible] [illegible] haeres [illegible]

[illegible] [illegible] ut [illegible] solemnitates [illegible] [illegible] voluntas [illegible] testamenta [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] voluntas [illegible] testatoris [illegible] [illegible] [illegible] [illegible] [illegible] voluntatem [illegible] testamentum [illegible] [illegible] [illegible] [illegible] dominium, [illegible] voluntatis de qua certo constat testamento [illegible] [illegible] solemnitatis [illegible] solvuntur voluntas testans [illegible] circa testamenta [illegible] sanctitum est, ut testatoris voluntas [illegible]

[illegible] voluntas testatoris [illegible] in carcere [illegible] decorata [illegible]

[illegible]

[illegible] voluntatis [illegible]

[illegible]

[illegible] maj. [illegible] voluntate [illegible]

[illegible] intendere [illegible] heres [illegible]

[illegible] et [illegible] perspicua et

certa [illegible] testatoris [illegible] convocare [illegible]

[illegible] testamentum [illegible] a sola testatoris voluntate [illegible]

et manifesta [illegible] voluntatis [illegible] tenenda et reverenda [illegible] leges [illegible] voluntas

contraria aut dubia et obscura sunt, aut solum sine [illegible] intentione [illegible]

[illegible] testamentum constituta [illegible] et ea [illegible]

[illegible] alteri [illegible]

[illegible] incommoda [illegible] sed malis communiter contingere [illegible]

[illegible] leges [illegible]

[illegible] ut voluntas [illegible] verum etiam ea quae

obstendunt impedimenta non [illegible]. [illegible] de fidei commissis [illegible], qui pro imperfecto testa-

[illegible] heres [illegible] testamento [illegible]

[illegible] voluntatis [illegible] Lacob [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] testamento vel ab intestato heres extiterit [illegible] voluntas defuncti circa le-

[illegible]

[illegible] penitus auferrent [illegible]

[illegible] testamento [illegible]

[illegible]

[illegible] de voluntate testatoris non solemniter nec licite [illegible]

[illegible] sed in particulari [illegible] videlicet [illegible] testator [illegible]

[illegible] in heredem, vel scripti, vel ab intestato [illegible] aut conventionis [illegible]

[illegible]

Denique ad intelligendas leges que videntur [illegible]

[illegible] nomen [illegible] substantiale [illegible]

[illegible] in fide [illegible] sive [illegible] heredis [illegible] et [illegible] aliquid [illegible], si heres [illegible]

adm

[illegible] fidei [illegible] negando [illegible] [illegible] [illegible] [illegible] [illegible] quae [illegible] [illegible] habere [illegible] testatori [illegible] [illegible] [illegible] ne deperea ultima voluntas testatoris fidei heredis commissa

Ex quibus [illegible] [illegible] sufficiente [illegible] juris [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] testamentum [illegible] [illegible] gratia [illegible] [illegible] justinianus [illegible] [illegible] propter [illegible] [illegible] non bene [illegible] ad [illegible] ultimas voluntates [illegible] [illegible] [illegible] [illegible] [illegible] heredi [illegible] [illegible] nomen [illegible] tantia [illegible]. Ergo [illegible] heredes in conscientia teneri etiam non [illegible] juramento solvere [illegible] [illegible] non solum quando [illegible] promisit [illegible] tunc teneretur [illegible] contractus [illegible] [illegible] etiam quando [illegible] promisit [illegible] [illegible] [illegible] tacuit. [illegible] qui tacet [illegible] ipsa taciturnitate [illegible] consentire [illegible] lex [illegible] si heres [illegible] tentus [illegible] negando [illegible] [illegible] ergo [illegible] [illegible] [illegible] heres [illegible] [illegible] [illegible] negaverit

Instant [illegible] jus civile vel [illegible] probationis [illegible] testes exigit [illegible] [illegible] testament [illegible] [illegible] [illegible] [illegible] [illegible] testamento Alexander III [illegible] Hostiensi [illegible] [illegible] quia [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] juris civilis [illegible] [illegible] testamento [illegible] [illegible] [illegible] [illegible] extremo [illegible] [illegible] [illegible] interminatione anathematis [illegible] [illegible] testamento

[illegible] [illegible] canonistarum sententia [illegible] Pontifex [illegible] [illegible] [illegible] [illegible] civitas [illegible] [illegible] [illegible] [illegible] exigat [illegible] testium numerum [illegible] [illegible] [illegible]

pr

 [illegible] jure [illegible]
[illegible] in testamenti [illegible]
[illegible]
[illegible] item [illegible]

[illegible] interpretandae non sunt [illegible] nihil [illegible] conversione [illegible]
[illegible] justinianus [illegible]
[illegible]
[illegible]
[illegible]
[illegible]

[illegible] legitima [illegible]
[illegible] conformi [illegible]
[illegible]
[illegible]
dispiciendi.

[illegible]
[illegible]
[illegible]
[illegible]
[illegible] testamento [illegible]
[illegible] non possit.

Doctrina quam [illegible] testamenti [illegible]
[illegible]
[illegible]

et varii et [illegible] in [illegible] sunt [illegible] tamen ea inter [illegible]

quae de jure [illegible] Divino, et [illegible] sunt, nimirum capacitas testatoris ad [illegible]

testamentum [illegible] voluntaris, qua testatur [illegible] sive [illegible] testes [illegible]

acquisita [illegible], imo ex [illegible] de testa. ubi Gregorius IX ait = cognovimus, quod

moriens Uxor [illegible] argentea [illegible] vendendam, domi [illegible] et [illegible]

[illegible] argentea [illegible] monasterio [illegible] in [illegible] voluntate ejus [illegible] =.

[illegible] in [illegible] capitulo [illegible] de testa. ubi Alexander III circa testamenta,

et legata ad pias causas sic [illegible] = mandamus, quatenus [illegible] aliqua [illegible] ad [illegible]

[illegible] examen deducta [illegible], sed secundum Decretorum statuta tracte [illegible]

[illegible] legitimis testibus requisitis = Accedit, quod ejusmodi testamenta et legata sunt [illegible]

[illegible] testatoris [illegible], aut [illegible] semper [illegible] sunt restitutiones,

quae [illegible] ex justitia, et [illegible]

[illegible] testamentum et legata [illegible] ad pias causas [illegible] quando [illegible]

[illegible] sunt [illegible] monasteria oratoria capellae [illegible]

[illegible] opera [illegible] De [illegible]

[illegible] vel temporales, ad [illegible] causa [illegible], ad [illegible]

[illegible]

[illegible] aut [illegible]

[illegible]

[illegible]

sic habetur in capitulo [illegible] de testa.

[illegible] testamenti [illegible]

[illegible]

testatoris non [illegible] testes [illegible] voluntate [illegible]

[illegible]

[illegible] interno satisfacere obligatur [illegible] probatione [illegible] quando de veritate

[illegible] veritat. [illegible]

25 [illegible] testamento [illegible]

[illegible] causam retineat [illegible]

[illegible] testamento [illegible]

[illegible] causas [illegible] non [illegible]

[illegible] testamento [illegible] tamen [illegible] testamentum revocari [illegible] causas [illegible] testamentum [illegible] causas confectum est.

[illegible] testamento [illegible] principio [illegible] institu[illegible] [illegible] introducta quae ad pias causas [illegible]

Infertur [illegible] validum esse testamentum ad pias causas, quamvis arbitrio alterius [illegible] [illegible] ut si quis dicat, institu[illegible] [illegible] de testa[illegible]

[illegible]

[illegible] non pia [illegible] [illegible]

[illegible] testamentum [illegible]

[illegible] concessa è [illegible] ad causam non già [illegible]

[illegible] testamento [illegible] non [illegible] fra [illegible]

[illegible] libera ut [illegible] et [illegible] legata in eo testamen-

to [illegible] extraneis non valent [illegible] ergo et in proprio

suo testamento [illegible] causas [illegible]

[illegible] de [illegible]

[illegible] in [illegible]

[illegible] Pontifices [illegible] non [illegible] causam ad cau-

sas [illegible] spirituale Pontificii [illegible]

[illegible]

Con [illegible] etia [illegible]

[illegible] testamento [illegible] non [illegible]

[illegible] etiá [illegible]

[illegible] Atqui equitas non [illegible]

[illegible]

[illegible] argumenta [illegible]

testamento [illegible]

[illegible] testamento [illegible]

[illegible]

Cum ea iuris regula non [illegible] in accessorio ratio è diversa, et contraria. [illegible]

[illegible]

[illegible] evenit intestatus

[illegible] materia [illegible]

[illegible]

[illegible]

[illegible] materia [illegible]

[illegible] sono preceduti dalli [illegible]

alcun

24 [illegible] [illegible] strauenti

[illegible] rasimonte [illegible] e [illegible]

[illegible] e [illegible] lucenti [illegible] [illegible]

[illegible] e [illegible] il [illegible] e [illegible] conveniente

[illegible] cioè [illegible] [illegible] detto effetto [illegible] con

[illegible] [illegible] [illegible]

[illegible] a titolo di qualunque cauzione [illegible] in tutto [illegible] parte [illegible]

[illegible] [illegible]

[illegible] [illegible] effettivo denaro e per

una volta tanto

[illegible] quasi extrinseca [illegible]

[illegible] ex parte [illegible] tamen [illegible]

[illegible] [illegible] [illegible]

[illegible] [illegible] et [illegible]

[illegible] satis esse [illegible] sed tantum

[illegible] [illegible]

[illegible] [illegible] tamen [illegible] potest non

[illegible]

[illegible] [illegible]

[illegible] [illegible]

[illegible] [illegible]

[illegible] [illegible]

[illegible] [illegible]

[illegible] [illegible] testa-

mento [illegible] [illegible] habeat [illegible]

[illegible] [illegible]

[illegible] [illegible] ratificationis [illegible] nec legali

[illegible] testamento [illegible] non [illegible] magnus [illegible] [illegible] inter eos [illegible] et propter reverentiam parentis [illegible] liberi dispositioni eorum [illegible] [illegible]

[illegible] testamenti tametsi [illegible] veritatis [illegible] inter [illegible] effectum habeat [illegible] testamento [illegible] [illegible] possent [illegible].

[illegible] testamenti [illegible] statuit [illegible] testamenti imperfecti [illegible] testamentum non valeat [illegible] testamento et nomina [illegible] et portiones [illegible] testamentum [illegible] testamenti [illegible]

[illegible]

[illegible] Lucius [illegible] dimisit, et a [illegible] [illegible] [illegible]

[illegible]

[illegible] aleat testamentum [illegible] tempore confeci [illegible] quas leges requirunt [illegible] et [illegible] vera opinio [illegible] a lege praescriptos [illegible] [illegible] segregari, et adhiberi, ex [illegible] De testa. [illegible] [illegible] [illegible] non [illegible] conveniant numerus [illegible] observatio [illegible]

II

[illegible]

[illegible] conditionem revocare.

[illegible] qui [illegible] triplicis sunt generis, alii [illegible] prohibentur jure [illegible], alii lege. [illegible]

[illegible] actu testandi [illegible] qui [illegible] [illegible]

[illegible] qui [illegible] mentes non sunt [illegible] habent intervalla et [illegible] [illegible] non [illegible]

[illegible] legitima observatio requirit [illegible] certo testamento [illegible]

tia testamenti [illegible] testamenti [illegible] [illegible]

[illegible] testamenti [illegible] tempore fu-

erit et delirii, requirit generalis regula propriis [illegible] standum [illegible] testium qui [illegible]

hoc delirium [illegible] ex circumstantiis et conjecturis ex ipso testamento desumendis. Nam si testamentum [illegible]

[illegible]

[illegible] amentia [illegible]

fure et de amentia [illegible] de amentiae intermissione non [illegible] Quod si antea sanae mentis erat non [illegible]

[illegible] mutatio, [illegible] e contrario de sana mente non de mutatione [illegible]

[illegible] sana mente [illegible] tempore antecedenti [illegible]

[illegible] si [illegible] antea [illegible] non [illegible] mutatio [illegible]

na mente haberat non [illegible]

[illegible] ex majori [illegible] temporis [illegible] et [illegible]

incumbit probatio contraria.

[illegible] declarat lex [illegible] maxime [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] testari non [illegible]

bere, et signare debent [illegible] non habeant, [illegible] testis [illegible] oportet, [illegible]

[illegible]

[illegible] testari non possunt [illegible]

[illegible]

[illegible]

[illegible] vel ante pubertatem ne ad quas quidem causas condi testamenta [illegible] ut colligi[illegible]

[illegible]

[illegible] ... admonendi administratio adimeretur [illegible] ... quin[illegible]

[illegible]

[illegible] ... intellevatis in le manichea ... de lege[illegible]

[illegible] ... si vero ob commendationem damnati [illegible]

[illegible]

[illegible] ... damnati ad triremes vel carcerem [illegible]

[illegible]

[illegible] ... lege ... [illegible]

[illegible]

[illegible] ... testandi, vel alienandi vel donandi libera facultate concessa.

[illegible]

[illegible] heredem [illegible]

[illegible] anoctit [illegible]

[illegible]

[illegible] testamen ad causas [illegible]

[illegible]

[illegible] beneficium obtinet [illegible]

[illegible]

[illegible] minime [illegible]

[illegible]

[illegible]

[illegible] militet [illegible]

[illegible] aliud [illegible] non possunt liberis [illegible]

[illegible]

[illegible]

[illegible] de iis [illegible] mortis tempore habitura [illegible]

[illegible]

[illegible]

[illegible] cum culpa non vacat necessario [illegible] testamento [illegible]

[illegible]

[illegible]

[illegible]

[illegible] conditi aut [illegible]

[illegible]

[illegible] non sit [illegible]

[illegible]

[illegible] in testamento aut [illegible] aut [illegible] causa [illegible]

[illegible]

[illegible]

[illegible] quae inde [illegible] oriri[illegible]

[illegible]

[illegible] obligare se valeat [illegible]

[illegible] ideo ut a priore voluntate ei recedere non liceat.

[illegible] testamento [illegible]

[illegible]

Inquires primo si testator juraverit se non revocaturum testamentum. [illegible]

[illegible]

[illegible] ad theologorum sententiam [illegible]

[illegible]

[illegible] factis non privati sed publici juris e[st], ideoque forma ejus privatorum [illegible] non [illegible].

Neque et ad primum [illegible] juramentum [illegible] principaliter includere tacitas conditiones [illegible]

[illegible] et tamen [illegible]

trahisse, [illegible] conditionibus ac revocabilitate relinquere [illegible] testamentum [illegible]

[illegible] testamento [illegible]

[illegible]

[illegible] ad hanc [illegible] irrevocabilitatem [illegible]

juramentum adjunxit.

[illegible] contra bonos mores [illegible] in quantum [illegible]

[illegible] testamentum revocari posse [illegible]

[illegible]

[illegible]

[illegible]

[illegible] juramentum [illegible]

[illegible] et revocari et [illegible] contra bonos mores [illegible]

[illegible] testamentum mutare et ad illud non revocandum se per juramentum [illegible]

[illegible] testamentum [illegible] juramento [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] testator [illegible] dispositioni suae [illegible] solemnitatibus [illegible]

[illegible]

[illegible]

[illegible] valide revocari [illegible]

[illegible] communis sententia [illegible] testator [illegible] testamentum revocare possit [illegible]

[illegible]

[illegible] testatoris [illegible]

[illegible]

[illegible]

[illegible] venienti acquisivit jus ad bona testatoris et testator contra[illegible]

[illegible]

[illegible]

[illegible] Illud etiam [illegible] non est ex[illegible]

[illegible] erat defuncto vel quoad totum, vel quoad partem [illegible]

[illegible] interest [illegible] research[illegible]

[illegible]

heres ad illud revocandum tenet.

[illegible] testamento [illegible]

[illegible]

[illegible] testamento [illegible]

[illegible] ac [illegible] nova

cum promissio illa in nova provisione confirmari per juramentum requirat.

[illegible]

[illegible] testamento [illegible] maritus [illegible]

[illegible] testamentum [illegible]

[illegible] revocare testamentum [illegible]

qui ampla alteri tradita ad testamentum condendum

Si quaeres 4to, si duo, ex. gr. maritus et uxor simul testamentum [illegible] ad [illegible]

[illegible] statuerent ut uno mortuo alter, vel uxor (vel maritus), uno mortuo [illegible] alter, [illegible], revocare testamentum suum [illegible] [illegible] adhuc usumfructum [illegible]

[illegible]

tenent communiter [illegible] non fit [illegible]
testamentum [illegible] revocare, et nihilominus [illegible] alterius [illegible]
[illegible] alteri testamentum revocare [illegible]
[illegible] testamento [illegible]
[illegible] conditio [illegible] conditio esse
[illegible] testamento [illegible] impossibilis [illegible]
[illegible] testamento [illegible] ut alterutrum praestare [illegible]
[illegible] testamento [illegible] revocare testamentum [illegible]

[illegible] duo [illegible] testamenta [illegible] quod posterius?

Resp. si [illegible] legatum vel [illegible] testamento [illegible]
[illegible] testatoris voluntate [illegible] ex testamento [illegible]
[illegible] testamento [illegible] hereditate [illegible] ab intestato
[illegible] testamento [illegible]

[illegible] in priori testamento [illegible] derogatoria [illegible]
[illegible] testamentum condiderit se nolle id valiturum?

Resp. ut valeat revocatio prioris testamenti facta cum clausula derogatoria [illegible]
[illegible] testamento [illegible]
[illegible] derogatoria [illegible] testamenti [illegible] testamento [illegible]
[illegible] communiter [illegible]
[illegible] dixerit [illegible] voluntatis se poenituisse [illegible] in [illegible] testamento [illegible] testator [illegible]
[illegible] clausulae, [illegible] revocatione testamenti [illegible] clausula in mente [illegible] venire [illegible]

[illegible]

[illegible] respondet [illegible] communis [illegible]

[illegible] testamento [illegible]

[illegible] non exprimat [illegible]

[illegible]

[illegible] renovantur [illegible] requirunt contra communem regulam debent revoca-

[illegible]

[illegible] testamentum [illegible]

[illegible] testamentum [illegible]

[illegible] testamentum inter liberos [illegible]

parentis facti inter extraneos ideoque per subsequens testamentum expresse revocari [illegible]

[illegible] testamentum inter liberos confectum non revocatur [illegible] testator [illegible]

[illegible] testamento [illegible] testamentum [illegible]

[illegible]

[illegible] habendo, nisi forte conjecturae contrarium suadeant.

[illegible]

[illegible] testamentum [illegible]

[illegible]

[illegible] communiter [illegible] de institutione [illegible]

[illegible]

[illegible]

[illegible]

[illegible] qui ab intestato venire possunt, quamvis tamen [illegible]

[illegible] testamento [illegible]

[illegible] testamento [illegible]

[illegible] testamento [illegible]

intestatus decedere [illegible] in ejusmodi [illegible]

[illegible] testamenti [illegible]

Observandum [illegible] testamento [illegible] a testatore [illegible] contrarium [illegible] testamento [illegible] ejus substantias [illegible] aut [illegible] auferat [illegible] industria ex l. si unus [illegible] et l. nostrae [illegible] Si vero, quod [illegible] sit pars substantialis, [illegible] pars [illegible] et reliqua integra et valida maneat ut [illegible] ex l. [illegible] [illegible] quae in testamento [illegible].

Sectio III

De personis quae ex testamento [illegible]
aut [illegible] heredes [illegible].

Non solum [illegible] etiamsi [illegible] sint [illegible] ex testamentis [illegible] [illegible] positi heres aut legatarius instituti [illegible] requiritur [illegible] a jure praescripta et capacitas in herede aut legatario.

[illegible] personae [illegible] testamento [illegible] haereticos [illegible] et anathematizari [illegible] de haereticis.

[illegible] testator [illegible] in [illegible] sententia [illegible] testamenti [illegible] testatoris [illegible] heres [illegible] neglexit: auferatur ab eo hereditas, et [illegible] hereditatis [illegible] de [illegible] damnatorum.

[illegible]

[illegible] ... et eam per sententiam ... [illegible]

[illegible] ... matrimonio ... [illegible]

[illegible] ... testamento ... [illegible]

[illegible] ... adversus eundem prolata. Si tamen ... [illegible]

[illegible] sententia vel pendente appellatione ... [illegible]

Non levis difficultas [illegible] ... [illegible] ... ex privilegio Principis legitimari ... et ... legitimatio ... [illegible]

[illegible]

[illegible]

[illegible] ... ex privilegio legitimati ... [illegible]

[illegible] ... matrimonium ... [illegible]

[illegible] ... legitimi ... sine consensu ... [illegible]

[illegible] ... ex parentis ... testamento ... seu intervenientes ... [illegible]

[illegible]

[illegible]

[illegible]

[illegible] ... descendentes et ascendentes ... [illegible]

[illegible] ... ex authentica ... [illegible]

[illegible]

[illegible] ... ex authentica ... descendentes ... [illegible]

[illegible]

[illegible]

[illegible]

[illegible] relictis filiis legitimis aut legitima [illegible] et [illegible] ex testamento [illegible]

[illegible]

[illegible] alimenta [illegible]

[illegible] parentes [illegible] mater [illegible]

non possit, tenentur [illegible] ex parte [illegible]

Sunt. Heredes quoque [illegible] omnia defuncti testatoris onera, debent hec alimenta prebere idest victus [illegible]

[illegible] convenientanea [illegible] dignitati [illegible]

[illegible] industria careat [illegible] contrario [illegible] naturali alere parentes, et [illegible] si pauperes sint, nec habeant unde vivant

Demum filius naturalis matri [illegible] careat [illegible]

[illegible] habeat filius [illegible] legitimus [illegible]

[illegible] naturalis [illegible]

[illegible] Si ergo naturali [illegible]

[illegible] unde cognati [illegible] descendunt de matre, quoque [illegible]

[illegible]

[illegible] Unde [illegible]

[illegible]

[illegible] accedat et [illegible]

[illegible] paterna [illegible] omnes [illegible] gravi [illegible]. Quamvis [illegible]

modi [illegible] hereditatis [illegible] restituendae [illegible] bona [illegible]

[illegible] unica [illegible]

[illegible] hereditatis, heres, qui hujusmodi [illegible] non restituit, [illegible]

[illegible] substitutus [illegible]

[illegible] substitutus [illegible] in iis bonis [illegible]

[illegible] non [illegible] sed bona [illegible]

[illegible]

[illegible] quanta [illegible]

[illegible] substitutione [illegible]

[illegible]

[illegible] ut ex bonis [illegible] testatoris [illegible] non [illegible]

[illegible] aut si exeredato [illegible] substitutus non [illegible]

[illegible] si [illegible] communi

[illegible] testamentariis [illegible]

[illegible]

[illegible] testamentarii [illegible]

[illegible] nomine [illegible] nomine [illegible]

[illegible]

[illegible] et [illegible]

[illegible] valent.

[illegible] quamvis sententia communis affirmet a [illegible] uxori [illegible]

[illegible]

[illegible] contrario [illegible]

[illegible]

[illegible] V [illegible]

[illegible]

[illegible] quoad bona quae ex ecclesiasticis [illegible]bus proveniunt.

[illegible] potest [illegible]

[illegible] procreatu[illegible] potest [illegible]

[illegible]

[illegible]

[illegible] ad casus in [illegible]

[illegible]

[illegible]

[illegible]

[illegible] unciis

[illegible]

[illegible] ... et [illegible] ... [illegible]

Item [illegible] ... [illegible] ... [illegible] ... legis[illegible] authenticis et onera [illegible] ... [illegible] ... [illegible] ... [illegible] ... [illegible]

[illegible] ... [illegible] ... [illegible] ... [illegible] ... [illegible]

[illegible] ... [illegible] ... [illegible] ... [illegible] ... [illegible]

[illegible] ... [illegible] ... succedere [illegible] ... [illegible] ... [illegible]

heredes [illegible]

[illegible] ... [illegible] ... [illegible] ... dabat institutos [illegible] ...

[illegible] ... [illegible] ... [illegible] ... [illegible] ... [illegible]

[illegible] ... [illegible] ... [illegible] ... [illegible] ... [illegible]

[illegible] ... [illegible] ... [illegible] ... [illegible] ... [illegible]

[illegible] ... [illegible] ... [illegible] ... [illegible] ... [illegible]

[illegible] ... [illegible] ... [illegible] ... [illegible] ... [illegible]

[illegible] ... [illegible] ... [illegible] ... [illegible] ... [illegible]

[illegible] ... [illegible] ... [illegible] ... [illegible] ... [illegible]

[illegible]

[illegible] ... [illegible] ... [illegible] ... [illegible] ... [illegible]

[illegible] ... [illegible] ... [illegible] ... [illegible] ... [illegible]

[illegible] ... [illegible] ... [illegible] ... [illegible] ... [illegible]

[illegible] ... [illegible] ... [illegible] ... [illegible] ... [illegible]

[illegible] ... [illegible] ... [illegible] ... [illegible] ... [illegible]

[illegible] ... [illegible] ... [illegible] ... [illegible] ... [illegible]

[illegible]

[illegible] ... [illegible] ... [illegible]

[illegible] ... [illegible] ... [illegible] ... [illegible] ... [illegible]

[illegible] ... relinquere. Hec [illegible] ... debita [illegible] ... in authentica [illegible] ... de [illegible] ...

[illegible] ... [illegible] ... novissima lege cautum est ut si [illegible] ... [illegible] ...

[illegible] ex [illegible] [illegible] [illegible] [illegible] ex eo scilicet inter eos [illegible]

videtur. [illegible] ex aucto [illegible] [illegible] [illegible] ut pro legitima [illegible] [illegible]

[illegible] [illegible] paterne [illegible]. [illegible] ut donationis, aut legati titulo relinquat,

[illegible] testamenti [illegible] titulo hereditatis [illegible] ex [illegible]

[illegible] [illegible]

Legitima vero [illegible] [illegible] detractis [illegible] funeris, et [illegible] [illegible]. [illegible]

tantum [illegible] bonis [illegible] in [illegible] [illegible] in [illegible] spectant ad primogenitum

[illegible] [illegible] pater [illegible] maximum [illegible] [illegible] sicut in

[illegible] [illegible] [illegible] intelligi de bonis que sunt de substantia patris, non ita ex bonis

[illegible] que dicuntur ex [illegible], et providentia secundum [illegible], et gratia concedentis. [illegible] vero

legitima [illegible] [illegible] pars assignari [illegible] [illegible] [illegible] attingat [illegible]

in [illegible] legitima [illegible] instituat, competit actio [illegible] complementum [illegible]

ex authentica [illegible] [illegible] non [illegible] [illegible] [illegible]

etiam si pater [illegible] heredem [illegible] conditione [illegible] [illegible] [illegible]

[illegible] aut [illegible] [illegible] restituat, legitima [illegible] [illegible]

[illegible] [illegible] [illegible] legitima [illegible].

[illegible] [illegible] [illegible] legitima [illegible].

[illegible] [illegible] [illegible] [illegible] [illegible]

vera legitima portione [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] legitimam relinquere [illegible], ideo [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] inter [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

heres constituendi sunt, si inter [illegible] [illegible] [illegible] testator [illegible]

et [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

sint, et magno sumptu in studiis educari debeant.

[illegible] [illegible] [illegible] [illegible] [illegible] ita viventibus [illegible]

[illegible] intervenientibus heredibus [illegible]

[illegible]

[illegible] et reliquis [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] ascendentes [illegible]

[illegible] succedunt [illegible]

[illegible]

ascendentes intelligi, praeter duas adversas differentias

Prima differentia est quod ex ascendentibus non omnes, sed soli proximiores in gradu succedunt [illegible]

[illegible] defunctus in ascendentibus non repraesentat. [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] desiit, tamen [illegible] [illegible] ne [illegible] [illegible] non posse testamentum [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] ad [illegible] gravis ac [illegible] [illegible], et [illegible] [illegible] competit.

[illegible] [illegible] [illegible] uxori si tamen [illegible] fuerit, charitas requirit ut [illegible] [illegible] [illegible] [illegible]. [illegible] charitas [illegible], et [illegible] [illegible] [illegible] coniugi [illegible] una caro [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] debet, [illegible] [illegible] [illegible] [illegible] [illegible]. [illegible] inter fratres [illegible] ad tollenda scandala [illegible] [illegible] [illegible] [illegible] sunt. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] testator [illegible] [illegible] [illegible]. Quod confirmatur [illegible] [illegible] caput [illegible] [illegible] [illegible] testatori [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] aliis [illegible].

[illegible] legitima [illegible] [illegible] testamentum [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] testamento [illegible] [illegible] [illegible] [illegible] [illegible] testamento [illegible] ex capite, quod institutus hereditatem adire noluit.

[illegible] [illegible] [illegible] [illegible] [illegible] in [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible]

[illegible] quo [illegible] iniuria, que [illegible] [illegible] sit [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] spectata maritate [illegible] et [illegible] circumstantiis loci ac temporis [illegible] [illegible] [illegible]

[illegible] de crimine [illegible] quod [illegible] sit [illegible], aut [illegible] [illegible] [illegible] tamen [illegible]

de [illegible] [illegible] majestatis de [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] in [illegible] morte [illegible] vero [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] carnale [illegible] [illegible]

[illegible] contra [illegible] [illegible] [illegible] in iudicio [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] testamentum [illegible] aut contra [illegible] revocaret [illegible] [illegible] [illegible]

et [illegible] contra voluntatem [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] matrimonio [illegible] ut [illegible] [illegible] [illegible]

[illegible] [illegible] in [illegible] amentia [illegible] [illegible] aut [illegible] neglexerit [illegible] [illegible] ad [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible]

Quemadmodum [illegible] et [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] octo sequentes in citata novella [illegible] [illegible] numerantur [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] et [illegible] lege majestatis [illegible] vel humane [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] aut mater [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] testamentum [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] cum amentia [illegible] [illegible] [illegible] [illegible] amentia [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] catholica [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible]

[illegible] sententiae defendunt hac [illegible] ratione quia ubi e[st] eadem ratio, [illegible] [illegible] [illegible] [illegible] in [illegible] [illegible] ex [illegible] [illegible] causas [illegible] nisi quae in [illegible] [illegible] [illegible] in [illegible] [illegible] [illegible] quae in jure non exprimuntur.

Hinc sponte [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] solo jure communi [illegible] non [illegible] [illegible] [illegible] colligitur etiam ex [illegible] [illegible] sine consensu [illegible] [illegible] tamen [illegible] non [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] tuta conscientia [illegible] [illegible]

[illegible] satis liquet ex [illegible] de [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] poenitentiam in foro conscientiae [illegible] [illegible] [illegible] sed suffici-
entia

[illegible] non prodesse affirmant: [illegible] se [illegible] intelligi.

[illegible] disputant DD. [illegible] causis ob quas parentes [illegible] liberos exheredare [illegible] alimenta valeant [illegible] affirmant ex l. ult. C. de alen. lib. [illegible] et l. si quis a liberis ff. de lib. agnoscendis. Hoc tamen [illegible] distinctione intelligi [illegible] si [illegible] vitam traduxerint, tametsi non juxta status [illegible] alimenta [illegible] Si vero necessaria sustentatione careant, [illegible] alimenta [illegible] denegare [illegible] alimenta denegat [illegible] negare l. 4. de liber. agnoscendis.

Hactenus de heredis ex testamento [illegible] de iis [illegible] [illegible] successio [illegible] aut [illegible] aut [illegible] aut ex testamento [illegible] aut ab intestato. [illegible] intestato qui vel testamentum condere non potuit vel noluit, vel conditum revocavit vel si [illegible] [illegible] nec revocavit [illegible] irritum et [illegible], vel si ab initio valuit, postea irritum factum. Hereditas ab intestato [illegible] [illegible] nullo aut saltem valido testamento decedentis.

[illegible] ab intestato [illegible] in [illegible] [illegible] ab intestato [illegible] Trebellianum [illegible] [illegible] emancipati sive non emancipati [illegible] [illegible] pronepotes [illegible] capita [illegible] [illegible] ascendentes [illegible]

Sublatis descendentibus [illegible] ascendentes [illegible] ex parte collatera[illegible] [illegible] hereditatem. In [illegible] vero, ac [illegible] succedunt [illegible]

[illegible]

[illegible] semper [illegible]

[illegible]

[illegible] extrus tamen [illegible]

[illegible] que [illegible] matrimonio [illegible]

[illegible] nuptias [illegible]

frater sive descendentium et ascendentium [illegible]

sunt [illegible] conjuncti fratres et sorores qui ex utroque [illegible] defuncto conjuncti sunt et [illegible] sunt [illegible] fratres ac sorores qui sunt ex solo Patre vel [illegible] Matre conjuncti. Quod si unus ex fratribus utrinque conjunctis mortuus sit [illegible] hoc loco [illegible] cum Patruis [illegible] in [illegible] in stirpes. [illegible] si fratres et sorores utrinque conjuncti omnes mortui sint, eorum liberi [illegible] Patruos non utrinque conjunctos, [illegible] Patruum, qui eos Patruos et [illegible] pective fratres excluderet.

Deficientibus vero fratribus et sororibus utrinque conjunctis [illegible] sunt semifratres [illegible] ex parte unius tantummodo Parentis [illegible] et illi non per capita, sed per stirpes. Fratres ex uno Parente hunc inter se servant ordinem [illegible] [illegible], seu ex eadem Matre, [illegible] ex solo Patre [illegible] consanguinei [illegible] in successione [illegible] quae obveniunt ex parte Matris [illegible] per [illegible] Patris [illegible] praeter consanguineos. [illegible] omnes aequaliter succedunt. [illegible] proportione dicendum est de eorundem liberis.

Si fratres ac sorores [illegible] sunt, successio devolvitur ad collaterales [illegible] gradu [illegible] nullo habito respectu, utrum ex utroque an ex una duntaxat parte conjuncti sint. Qui [illegible] fuerint in eodem gradu [illegible]

Deficientibus [illegible]
[illegible] defuncti, nisi inter eos fuerit divortium, nec mortis tempore reconciliati erant. Quod si Uxor [illegible] consanguineus [illegible] succedit. Si nemo sit, [illegible] [illegible] [illegible] omnia sunt apud AA. et legum auctoritate nituntur.

[illegible] [illegible] haeredum obligationem attinet. [illegible] loco sermo instituendus [illegible] [illegible] quae uni haeredum testator [illegible] et [illegible] collatione [illegible]

[illegible] et [illegible] [illegible] [illegible]

[illegible] permittere [illegible] [illegible]

[illegible] an ea [illegible] in collatione [illegible]

[illegible] collatio [illegible] [illegible]

in [illegible] [illegible] quia [illegible]

[illegible] et filii qui volunt suo Parenti [illegible]

[illegible] intestato [illegible] et [illegible]

[illegible] ea que de bonis illius Parentis [illegible]

[illegible] ex testamento [illegible]

in [illegible] de mente et [illegible] ex ipsa collatione [illegible]

[illegible] ascendentes [illegible] in legitima [illegible]

[illegible] Patre [illegible]

[illegible]

[illegible] in legitima [illegible] ad [illegible]

[illegible] non [illegible] non possunt

[illegible] legitime [illegible]

[illegible] ex [illegible]

[illegible] et ceteri [illegible] 6 [illegible] Patri legitima [illegible]

[illegible] Pater [illegible]

[illegible] viveret [illegible] Pater [illegible]

[illegible] Patris [illegible]

[illegible] et [illegible] collatione [illegible]

[illegible]

[illegible]

[illegible] in [illegible]

[illegible] ad Patre [illegible]

[illegible]

lio illud acquirit non debet ipsi legitima. ergo quod ipsi traditum ab illo fuit iure [illegible] 155

Patris non praesumitur traditum fuisse in [illegible] conservandi. Neque ante [illegible] debet quae ab

illo post mortem Patris acquisivit [illegible] non debeat legitima vivente Patre, eo ta-

men mortuo debet, ille ante e collatione [illegible] legitima.

[illegible] debere ab eo qui sunt in [illegible] et le

[illegible]. Quamobrem non tenetur in commune [illegible] conferre, in non [illegible], sed alio ti-

tulo [illegible] ex bonis ascendentis aut iam habet aut [illegible] deinceps habere. [illegible] exi-

gere si quid sibi a Parente causa dotis, vel alia simili de causa promissum fuit [illegible] pro-

missio non sit inofficiosa, neque alicui legitimam [illegible] ultima distinctione de collatione dotis. [illegible]

[illegible] a Parente [illegible] in testamento titulo legati, aut donationis causa

mortis, [illegible] retinere, iuxta le [illegible] distinctione eodem [illegible]

[illegible], et talis donatio censetur gratuito fuisse [illegible] ex [illegible]

tima minorem acceperit non potest [illegible] quod complet legitimam.

[illegible] ante [illegible], [illegible] a Patre [illegible] Patris [illegible]

pit, a filio conferri debere cum reliquis, quibuscum in haereditate succedit [illegible]

[illegible]

[illegible] in haereditate succedere. Si enim dominium [illegible]

parente [illegible] non est collatio propria [illegible]

[illegible]

[illegible]

Quaestio [illegible] in eo sita est, utrum filius, [illegible]

[illegible] cui vult succedere, prius acceperat. [illegible]

[illegible] propositam [illegible] donationem distinguere [illegible]

[illegible] aut ex [illegible] donatis [illegible] ex solo [illegible]

[illegible] donatio ob causam, cum nempe quicquid filio donatum [illegible]

[illegible]

[illegible]

[illegible] sine publici, deseri vero ac ea consequentia que [illegible] causa. Ut titulus [illegible] ad sacros ordines, ad [illegible] in [illegible], ad nuptias pro dote, que conservari [illegible] [illegible] [illegible], [illegible] non constat de contraria voluntate donantis [illegible] [illegible] ut [illegible] ta maxime confirmant, ut liquet ex [illegible] [illegible] de collationib., et authentica ex testamento [illegible] de [illegible] titulo. [illegible] ante collatio [illegible] e [illegible] [illegible] [illegible] ut [illegible] in sua legitima et [illegible] in [illegible] [illegible] [illegible] [illegible] ratio huius [illegible] [illegible] [illegible], [illegible] [illegible] [illegible] [illegible] [illegible] ac ex mera liberalitate donari non [illegible] [illegible] in [illegible] legitime, [illegible] vero [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ad [illegible] [illegible] [illegible] [illegible] animo, et [illegible] sua [illegible] [illegible] atque ut [illegible] postea [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] aut [illegible] [illegible] aut difficultates [illegible] [illegible] ad [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] sumptus, quos pater fecit [illegible] [illegible] in studiis [illegible] in [illegible] cum fratrib. [illegible]

[illegible] ex [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] tamen [illegible] [illegible] ex [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] pater [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] in computando in legitima, [illegible] se [illegible] [illegible] pater [illegible] [illegible] expensas computandas esse [illegible] [illegible] animo pater [illegible] [illegible] [illegible]. Si pater [illegible] expensas in libro notabat tunc distinguendum [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

a[illegible] [illegible] non [illegible] satis [illegible] patre [illegible] computarent, si vero sola [illegible] est [illegible] potest forsasse [illegible] non [illegible] animum [illegible] donandi. illud [illegible] Patris, qui non habet [illegible] posse [illegible] ad ea conferenda quæ [illegible] sunt ad ejus sustentationem, ideo neq. ad computandos sumptus, quos Pater fecisset in [illegible] tametsi [illegible] non [illegible]. [illegible] sumptus in studio factos a [illegible] ante [illegible] Patris et [illegible] solutos, [illegible] ex [illegible] facultate [illegible] in studiis ex bonis Patris debetur.

[illegible] [illegible] quos Pater [illegible], vel tradidit [illegible] studiis [illegible] debeant in partitione [illegible] [illegible] in [illegible] habent controversiis. [illegible] contrariis [illegible] tempore paternæ mortis non [illegible] [illegible] aut promotus ad sacros ordines ex [illegible] Pater [illegible] non censet [illegible] sed [illegible] revocatus [illegible] [illegible] videntur ad Patrem spectare [illegible] ante [illegible] [illegible] [illegible] quod de [illegible] ut nomine [illegible]

[illegible] [illegible] conferendis [illegible] filio [illegible] [illegible] [illegible] pro [illegible] uxore [illegible].

[illegible] impensa facta pro sustinendis oneribus matrimonii [illegible] [illegible] [illegible] non [illegible] Patris [illegible] Non [illegible] Pater ea computare in portione illa [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] que Pater illi dedit ut ex eorum [illegible] matrimonii sustineret non [illegible] [illegible] conferri. [illegible] conferri debent [illegible] proprietatis [illegible] ter causa matrimonii ideo [illegible] collationi [illegible].

[illegible] [illegible] [illegible] [illegible] dedit Pater [illegible] ad sacros ordines recipiendos. [illegible] [illegible] [illegible] ut de donatione [illegible]

[illegible] in utroque casu [illegible] ex [illegible]

[illegible] et [illegible] aut occasione [illegible] a filio celebrate [illegible]

[illegible] administratione perti-

nent. [illegible] tamen, si Pater intentionem habeat ex bonis ipsius filii, quae administrat, [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] aut [illegible]

[illegible]

[illegible] habuerat, [illegible] et [illegible] data [illegible].

[illegible]

[illegible] a poena propter [illegible] imposita vel imponenda

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] ad [illegible] sunt [illegible]

[illegible] si [illegible] fratres [illegible] tantumm [illegible]

[illegible] [illegible] non [illegible]

[illegible] in [illegible]

[illegible]

Quae [illegible] in [illegible] et transmitti valent ad [illegible]

[illegible] in divisione [illegible] de illis ante [illegible]

personalia sunt ut nec venditi, nec transmitti [illegible] consuetudinem [illegible]

[illegible] collatione [illegible]

de collatione bonorum. [illegible] pecuniam, quam [illegible]

[illegible] aliter [illegible]

[illegible]

[illegible] collationis onere [illegible]

[illegible] maritum [illegible]

[illegible]

[illegible] heredis ex testamento, et [illegible]

[illegible]

[illegible] ad [illegible] heredis [illegible]

[illegible] vero habuit [illegible] hereditatis sibi relictae, [illegible] inventarium

[illegible]

damnum sentit, quamvis inventarium non confecerit.

[illegible] confecto inventario [illegible] tenetur omnia legata solvere [illegible]

[illegible] heredes [illegible]

[illegible]

[illegible] hereditatis [illegible]

[illegible]

 [illegible] hac tenua [illegible] Illum pro-
[illegible] ergo si constet nullam fuisse fraudem ac falaciam, non
[illegible]

[illegible]
[illegible] quasi contractu et non ex [illegible]
[illegible]
[illegible]
legatarios, quia testator [illegible] non poterat nisi id quod habebat, ac proinde ad legata heres non tenetur ex
[illegible]
[illegible]
[illegible] sine culpa non [illegible]

[illegible]
[illegible]
[illegible] annum absolvatur. Faciendum autem est coram publico notario citatis vel alias vocatis creditoribus, et
legatariis ex authentico de heredibus, et falcidia [illegible]
[illegible]. Si creditores, ac legatarii absentes sint coram [illegible] debent adhiberi tres testes, [illegible] qui sint, et [illegible]
[illegible]
[illegible]
[illegible] faciendi inventarii remittere [illegible] creditorum [illegible]

[illegible]
[illegible]
[illegible]
[illegible] adesserunt. [illegible] potest [illegible]
invito creditore [illegible] ex [illegible] potest legatarios et creditores compellere, ut res ipsas hereditarias in solutum
[illegible] et qui hereditarias res emere velit [illegible] emere credito-
res. [illegible]
[illegible] habent in lege [illegible] de jure deliberandi

[illegible] [illegible] [illegible] [illegible] [illegible] comune [illegible] materia que [illegible] tantoso [illegible] [illegible] [illegible] nostras [illegible] in medio [illegible] et [illegible] [illegible] [illegible] [illegible] et comune intersit [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] e nuova [illegible] non [illegible] [illegible] [illegible], tameti [illegible] [illegible] [illegible] [illegible] [illegible] constitutiones nostre [illegible] [illegible] [illegible] 16 = Se veramente una figliuola [illegible] in [illegible] o infame senza l'assenso delli suoi, [illegible] e [illegible] e [illegible] ogni beneficio, che potesse avere ne [illegible] della casa = [illegible] [illegible] [illegible], [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] et [illegible] [illegible] [illegible] [illegible] successione [illegible], [illegible] [illegible] [illegible] [illegible] capitu[illegible] [illegible] statuti = [illegible] [illegible] [illegible] [illegible] [illegible] maritar [illegible] senza [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] che [illegible] [illegible] [illegible] maritate con il consenso di quelli =

[illegible] [illegible] [illegible] [illegible] [illegible] legittima [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] 186 = [illegible] che [illegible] [illegible] [illegible] [illegible] dal Padre [illegible] [illegible] [illegible] [illegible] [illegible] testamento [illegible] ragion di [illegible] o con altro titolo non voglia rompere il testamento del medesimo ne altro pretender [illegible] [illegible] paterna contro [illegible] [illegible], ancorche quanto le sarà stato [illegible] o lasciato nel testamento, non ascendesse alla quantità della legittima [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] dal Padre instituiti [illegible] [illegible] [illegible] [illegible] [illegible] medesimo ma se [illegible] [illegible] [illegible] dal Padre, o [illegible] [illegible] testamento, [illegible] [illegible] [illegible] [illegible], o altri [illegible] [illegible] [illegible] [illegible] [illegible] =

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] legitima [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] in [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], [illegible] [illegible] [illegible] [illegible] ab intestato [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] vero [illegible] [illegible] Preterea [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ascendentib[illegible] vero [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] Padre [illegible] sint. Quod [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] paternis [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] paterni [illegible] [illegible] linea [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible]

ascendentium et descendentium [illegible] masculi vero [illegible] merati [illegible] ad [illegible] feminina [illegible] masculi [illegible] ceteras feminas [illegible]

[illegible] supradicti mares aut nolint aut nequeant succedere, tunc in hereditate [illegible] feminae [illegible] mares ordine et modo [illegible] inter mares et feminas differentia [illegible] hereditate [illegible] tunc [illegible] quod ad [illegible] ordo supra [illegible] frater aut soror utrinque coniuncti uterinis [illegible] mater [illegible] concurrunt. Si frater uterinus et descendentibus et ascendentibus et collateralibus [illegible] ex parte [illegible] carent, tunc [illegible] frater uterinus [illegible] ex parte matris [illegible] propinquior [illegible] et [illegible] in gradu [illegible] aequaliter admittantur. Si vero succedendum sit ascendentibus [illegible] collateralibus, tunc [illegible] sui repraesentatione [illegible] patrui [illegible] [illegible]

[illegible] et post [illegible] [illegible] intra unum annum [illegible] ad [illegible] de acceptanda vel renuntianda hereditate.

Articulus II.

De [illegible] et [illegible] de [illegible]

[illegible]

[illegible] communiter [illegible]

[illegible] heredi institui Titius: si Titius heres non fuerit, vel quia nolet, vel quia non poterit, [illegible]

heres [illegible] Quamvis testator [illegible]

[illegible] Dixerit institui Titius et si ille noluerit

[illegible]

[illegible] testatore [illegible]

[illegible]

Lege ff. de liberis et posthumis. [illegible] tamen si de contraria testatoris voluntate constet.

Substitutio pupillaris [illegible] quae Pater vel [illegible] Pater [illegible]

[illegible]

[illegible] pupillari substitutione [illegible]

[illegible]

[illegible] substitutionis [illegible]

[illegible] testatore nec transeat in alterius [illegible] potestatem ex l. [illegible] ff. de vulgari et [illegible]

[illegible]

[illegible] sic erit [illegible] si sint in [illegible]

[illegible]

[illegible] Quod si pupillaris [illegible] substitutio sit invalida [illegible] quia facta a Matre [illegible]

[illegible]

[illegible] in ea pupillari substitutione [illegible] testator [illegible]

[illegible]

autel

[illegible]

mutare non posuit. *Pater in testamento* [illegible] *Pater eidem* [illegible] *in ipso testamento*

[illegible]

Pater pro filio [illegible] [illegible]

[illegible] *non* [illegible]

[illegible] valet [illegible] *substitutio non* [illegible]

[illegible]

[illegible]

valet, in ascendenti autem ordo servari [illegible]

[illegible] *ascendentes* [illegible] *vel* [illegible] *debet substitui,* [illegible]

[illegible]*. Si vero descendentes non habeat* [illegible] *et sorores, vel* [illegible] *in hac substitu-*

[illegible]

[illegible] *et testamento* [illegible]

humanitatis, codice de impuberum, et aliis substitutionibus

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] *testamento* [illegible]

[illegible] iura et actiones ac [illegible] transferre censetur nudo aut [illegible] aut [illegible] heredi re-
manente, sicuti [illegible] in [illegible] stipulationes restitutione fideicommissarii [illegible] substitutio fidei-
commissaria expirat [illegible] gravatus [illegible] decedat [illegible] fideicommissum ex-
tinguitur, et ius ad hereditatem non transit ad heredes fideicommissarii, si ante testatorem fideicommissarius mo-
riatur.

Substitutio reciproca, seu breviloquia ea est in qua plures heredes instituti sibi invi-
cem substituuntur et hac forma concipi solet. instituo heredes meos Titium et Caium, eosque invicem substituo.
Breviloquia dicitur, quia fit brevibus verbis.

Substitutio compendiosa est ea, quae verborum compendio plures continet substitutiones re-
[illegible] diversa tempora, et [illegible] ut si testator dicat: instituo filium meum heredem, et quandocunque decesserit [illegible]
[illegible] ita [illegible] ante mortem [illegible] [illegible] eius succedit substitutione vulgari: si vero
[illegible] ante [illegible] decedat cuius succedit substitutione pupillari: si filius moriatur post
pubertatem, cuius succedit substitutione fideicommissaria: tandem si filius moriatur [illegible] [illegible]
stitutione exemplari.

[illegible] [illegible] [illegible] [illegible] [illegible] amentis, [illegible]
[illegible] [illegible] testari et testamentum [illegible] si [illegible] mortis [illegible] non [illegible].
[illegible] fideicommissi [illegible] trebellianica non detrahitur, sed videntur sufficere fructus, quos heres gravatus perce-
pit ex bonis, quae restituere postea tenetur. imo [illegible] [illegible] ne [illegible] [illegible] detrahitur, [illegible]
cet alibi detrahatur, quando [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
quamvis [illegible] hereditatem acceptaverit.

Legatum definitur [illegible] institutionis de legatis donatio quaedam a defuncto relicta, et
[illegible] praestanda [illegible] donatio [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] donatio [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]

Fideicommissum est dispositio [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

vel

nihil a legato differt nisi verborum forma. [illegible] verba ad ipsum legatarium diriguntur, v. g. lego centum aureos Titio, dicitur stricte ac proprie legatum [illegible] ut [illegible] Titio [illegible] volo heredem meum [illegible]

[illegible] post mortem meam [illegible] transmittit [illegible] heres [illegible]

[illegible] consensu facta in gratiam [illegible]

[illegible]

Quod pertinet [illegible] de legato [illegible] sic habet [illegible]

[illegible]

[illegible] tum nullo modo [illegible]

in ex [illegible] legatu[m] [illegible] in [illegible] tamen huiusmodi legatu[m] [illegible] ut constat ex [illegible] de [illegible] externo, heres [illegible] [illegible] tenet[ur] legatu[m] inter [illegible] certo constat legatu[m] uni ex duobus deberi [illegible] constat [illegible] testator [illegible] manere et [illegible] ex [illegible] legatu[m] [illegible] Quando autem certo constat [illegible] non [illegible] [illegible]

[illegible]

[illegible] Parochiani [illegible] in [illegible] tamen [illegible] Parochie testator [illegible]

[illegible]

Legato aliqua re [illegible] mobili, sive immobili, [illegible] etiam [illegible] legato [illegible] Quare legato [illegible] legato [illegible] legato [illegible] legato [illegible]

[illegible]

Legatum [illegible] conditione [illegible] legati [illegible]

[illegible]

160 [illegible] et iudices [illegible] matrimonii [illegible]

Hec tamen doctrina nonnullas limitationes [illegible]. Primo valet in [illegible] potestate matrimonium contrahendi [illegible] ante [illegible], vel [illegible] aut familia.

[illegible] sub conditione [illegible] a nuptiis abstinuerit [illegible] vel [illegible] non contrahendi [illegible] matrimonii [illegible] tanquam [illegible] non [illegible] non [illegible] si conditio non [illegible] matrimonium [illegible] aut [illegible] matrimonio [illegible] conditionem [illegible] eccant.

[illegible] conditionis [illegible] conditione [illegible] contrahat matrimonium [illegible] matrimonium [illegible].

[illegible]

[illegible] et [illegible] ut ante diximus testator [illegible] et [illegible]

[illegible] puella [illegible] et [illegible] non [illegible] sine [illegible] non ut a [illegible]

[illegible] ut [illegible]

[illegible]

[illegible] Sententia [illegible] 25. Septembris 1564 [illegible]

[illegible] contra [illegible] ... rit. servanda est dispositione testatoris contra [illegible]

Conditio adjecta ut legatarius ducat hanc vel illam puellam, [illegible]

[illegible] matrimonium [illegible]

[illegible] contrahi non [illegible] tunc conventio [illegible]

[illegible]

[illegible] mei [illegible]

[illegible] Quamvis [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] nulla lex resistat, et nullus [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] lex [illegible]

[illegible]

[illegible] Secus autem [illegible] Quod [illegible]

[illegible] nulla [illegible] in particulari [illegible]

[illegible] non [illegible]

[illegible]

[illegible]

[illegible] variat accidere [illegible] communi omnium opinione [illegible] [illegible] ipsa [illegible] que secreto corrupta est. [illegible] [illegible] vere [illegible] tradi [illegible] puellis, quae parentes habent inutiles vel [illegible] redimunt. [illegible] puellae pro [illegible] [illegible] tradi [illegible] mulieri habenti [illegible]

[illegible] testamento [illegible]
[illegible] in [illegible] debiti.
[illegible] secerit.

[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible] contracta [illegible] [illegible] aetat.

[illegible] relictum de animae conservandi pro debito quando
[illegible]
[illegible]
[illegible]
[illegible] incurrere [illegible]
[illegible]
[illegible]
[illegible] injuriam [illegible] occupatione [illegible] tamen, ut antea monui, [illegible]
[illegible] contrario [illegible]
[illegible] causa exercerit. [illegible] quando [illegible]
[illegible]

[illegible] mais, quia [illegible] testatoris [illegible] [illegible]

aut de modo interpretandi actus [illegible]

[illegible] quomodo legatum [illegible]

[illegible] standum est intentioni testatoris, et in dubio attendendum est coniecturis, et praesumptionibus [illegible]

[illegible]

[illegible] legatum valet et heres [illegible] vel redimere et praestare [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

ad [illegible]

[illegible]

[illegible] tunc [illegible] res [illegible]

[illegible]

[illegible]

[illegible] et in [illegible] testator circa [illegible] [illegible] non [illegible]

[illegible]

[illegible]

[illegible] obligationi [illegible] oneratus [illegible]

[illegible] verbis [illegible]

[illegible] obligatus ab herede [illegible]

[illegible]

[illegible]

[illegible]

[illegible] ... et revocatur legatum ... [illegible]

[illegible]

quemadmodum legatum non revocatur ... [illegible]

Quaeres item, utrum, quemadmodum legatum revocatur, et [illegible]

[illegible] ... legatum ... [illegible] ... testator ... [illegible] ... et legatum ... [illegible] ... intellexit ... [illegible] ... legatum ... [illegible] ... in herede illud assumet nec adimeret illius ... Si vero testator necessitate ... [illegible]

[illegible]

Resp. ... [illegible] ... legatum ... [illegible] ... tamen ... [illegible] ... hereditatis ... testatoris ... [illegible] ... legatum ... [illegible]

[illegible] non uno fuit [illegible]

[illegible] nec suos nominatos legatarios nec [illegible]

[illegible]

[illegible] a [illegible] testatore [illegible]

[illegible]

[illegible] in continuacione [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

consideratis in his [illegible] vel de hereditate [illegible]

[illegible] huius [illegible] capitulo [illegible]

[illegible] a nouo [illegible]

[illegible] legatarius possit acceptare et non acceptare [illegible]

non [illegible] de legat. [illegible]

[illegible]

[illegible]

[illegible] a [illegible] [illegible] [illegible] legati, sub conditione [illegible] certa summa [illegible], a [illegible] nolente potest alter [illegible] parte [illegible] summa[illegible] [illegible] legati partem habere.

[illegible] vero legata, de quibus hactenus nobis sermo [illegible], [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] dicti quasi [illegible] [illegible], [illegible] scriptura [illegible] vel aliud [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] codicillus [illegible] hereditatem [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ad [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible].

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] testamento [illegible] [illegible] testamentum [illegible] [illegible] [illegible] testamento [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] testamento [illegible] [illegible] [illegible] testamento [illegible] [illegible] [illegible] [illegible] heredes ab intestato venientes [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] testamentum [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] testamento [illegible] [illegible] [illegible] caduca [illegible], [illegible] [illegible] [illegible], [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] prior a posteriori [illegible] [illegible] [illegible], [illegible] [illegible] [illegible].

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible]

[illegible] testamentum [illegible] reperitur [illegible]

[illegible] ex illis [illegible]. Si vero nulla talis clausula [illegible]

[illegible] praesumi possit quando testator jurat se velle ut omnia in testamento contenta servent [illegible]

[illegible]

[illegible] solemni facta non valeat, heres tamen ab intestato [illegible]

[illegible] testamento [illegible]. Si vero testamentum sit nullum non propter solemnitatem [illegible]

[illegible] etiam non apposita clausula [illegible] ab intestato solvere [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] dores ultimarum voluntatum [illegible] legitimi qui [illegible] a lege quibus [illegible] jure competit [illegible] exequendi; alii sunt testamentarii qui a testatore designati sunt, et alii [illegible]

[illegible]

[illegible] quando nullo herede instituto [illegible]

unicq defuncti omia bona distribuat. nam a jure communi [illegible] et ipse [illegible] [illegible] [illegible] mandat

[illegible] more et [illegible] Executor vero [illegible] [illegible] de [illegible] nec aliis [illegible] [illegible] testatoris [illegible]

et [illegible] testamentum [illegible] exequatur executori [illegible] in hoc [illegible] [illegible] quando [illegible]

nq voluntatis et [illegible] unius aut alterius [illegible] executio demandatur [illegible] [illegible]

Quaeres primo quibus competat hoc munus, si nemo a testatore executor nominatus, aut

si nominati recusent.

Resp. tunc ipso iure munus hoc heredi competere, quia testator suo loco surrogavit, et haec [illegible]

[illegible] [illegible] ex capitulo [illegible] [illegible] et [illegible] heredes de testamentis [illegible] legatum [illegible] redimendorum [illegible]

[illegible] cuius executio spectat ad Episcopum seu [illegible] [illegible] [illegible] nullus alius executor nominatus est ex authen-

tica de ecclesiasticis titulis [illegible] pro redemptione, ubi [illegible] hoc servari debere etiamsi testator expresse pro-

hibeat ne Episcopus se ingerat [illegible] tamen [illegible] [illegible] [illegible] [illegible]

[illegible]

[illegible]

[illegible] testator [illegible] [illegible]

[illegible]

[illegible]

[illegible]

Quaeres 2do quinam possint executores ultimae voluntatis designari

[illegible] testamenti [illegible]

[illegible] nec non [illegible] [illegible] [illegible] (Clementina quia [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] hoc [illegible] [illegible] [illegible] [illegible] in executio-

[illegible]

[illegible] [illegible] [illegible] superioris hoc officium exer-

[illegible] [illegible] in executionis officio

[illegible] [illegible] [illegible] testamentis [illegible]

[illegible]

[illegible] de [illegible] et [illegible] spiritualis [illegible]

[illegible] secare [illegible], ne veniant, uti [illegible] testamentarii executores aut procuratoris opera [illegible]-tiva officia [illegible], nisi necessitas [illegible] in [illegible] pronunciatum fiat

[illegible] executionem cuilibet committere sive uni sive pluribus, sive extraneis sive ex suis, et non solum maris [illegible] etiam feminis [illegible] [illegible] de testamentis et [illegible] ff. de [illegible] legatis. Hujus officii minores etiam capaces sunt [illegible] [illegible] anno [illegible] ut colligitur ex capitulo [illegible] [illegible] [illegible]. Quando aliquis fratres suos sui testamenti executores nominat, intelligentur sancti mares, et non feminae [illegible] legitima tutela [illegible] licet [illegible] ad [illegible] nuptias [illegible] amittat, non tamen amittit munus executricis in testamento primi mariti sibi [illegible] [illegible] quod hanc ipsi potestatem auferat.

Quaestio an executor nominatus compelli possit ad hoc munus [illegible]

[illegible] per judicem [illegible] compelli quando id necessarium [illegible], quia [illegible] pertinet ut de testamentorum executione [illegible] curam habeant. Attamen [illegible] testamento nominatus [illegible], nemo [illegible], ut hoc munus suscipiat [illegible] officium executoris [illegible] personas [illegible] non publicum [illegible] particulare ad [illegible] tenetur [illegible] si munus suscipere [illegible] ipso jure amittit [illegible] conditione [illegible] muneris [illegible] [illegible] executoris officium non acceptat, praemium relictum [illegible] executori nominato et acceptanti [illegible] diminuitur ratio mercedis [illegible] [illegible] accessere.

[illegible] executor [illegible] [illegible] substitutum [illegible] executor [illegible] testamenti non potest hoc munus [illegible] alteri committere, quia in executore [illegible] industria personae. Si executor tamen nominatus sit [illegible] [illegible] executor [illegible] [illegible]. Potest etiam executor negotium aliquod particulare alicui [illegible] alteri personae committere. An vero [illegible] [illegible], affirmant [illegible] tamen [illegible] [illegible] contra [illegible] quia officium hoc voluntarium est, et [illegible], vel [illegible] [illegible]

si executor ex ea causa propriis rebus agendis impediatur, eius lucrum [illegible] vel damnum emergat, sed quum [illegible] in [illegible] detrimento munus exerceat. Secus vero si non merus executor, sed etiam administrator bonorum [illegible] compellens [illegible]

Quaeritur an executor [illegible] testatoris ad solvendum legata vel alia a testatore praescripta.

[illegible] executor universalis [illegible] executore [illegible] testatore [illegible] propria auctoritate [illegible] debent autem [illegible] in testamento non contenta [illegible] executor [illegible] testamenti executor [illegible]

[illegible]

Quaeritur [illegible]

[illegible] per sex menses a iure concessi ex [illegible] de ecclesiasticis titulis, et capitulo tertio de testamentis [illegible] heredes, capitulo tua, et capitulo Joannes de testamentis [illegible] episcopus seu loci ordinarius [illegible] testatoris [illegible] executores [illegible] testamento [illegible]

[illegible]

quando non attentis [illegible] [illegible] [illegible] in Bulla [illegible] aut statuto ===

Quamvis autem a iure communi concedatur annus executoribus ad [illegible] [illegible] [illegible] [illegible] ultra tres menses ad [illegible] [illegible], tamen consilii non fuit [illegible] sed [illegible] dumtaxat [illegible] [illegible] ne [illegible] [illegible], nam [illegible] [illegible] 6. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] et [illegible] [illegible]. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] aut [illegible] [illegible] [illegible] [illegible] sicut [illegible] [illegible] constituit, veluti negatores pauperum, [illegible] [illegible], [illegible] [illegible] [illegible] === [illegible] [illegible] [illegible] [illegible], [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] === qui [illegible] [illegible] [illegible], et [illegible] in [illegible] [illegible], ut [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] negatores [illegible] [illegible] === [illegible] constitutione [illegible] [illegible] [illegible] ita decernunt === [illegible] [illegible] [illegible] [illegible] giustizia [illegible] [illegible] ancora [illegible] ordinazioni [illegible] [illegible] sia stata [illegible] e [illegible] [illegible] e [illegible] stabilimo, che i legati e [illegible] particolari possano subito, che viene il caso di pagarli, [illegible] [illegible] non solo col mezzo di [illegible] ma anco di mandato, sequestro et altro più [illegible] mezzo, [illegible] la qualità della cosa [illegible] === [illegible] [illegible] [illegible], ut ad solutionem [illegible] [illegible] [illegible] valeant, et ad [illegible] damna [illegible], [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

Quaeres 6to, utrum mortuus aliquis [illegible] [illegible] ex eo, quod [illegible] [illegible] [illegible] [illegible] [illegible]

Hanc quaestionem sibi proposuit Angelus [illegible] [illegible] quodlibeto 6. quaest. [illegible] art. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] maxime, [illegible] [illegible], [illegible] [illegible] [illegible], ut [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ex voluntate et intentione [illegible] sed quantum ad effectum [illegible] [illegible] [illegible] non [illegible], ut [illegible] [illegible] [illegible] [illegible], [illegible] [illegible] [illegible] [illegible] non [illegible] [illegible] [illegible], et [illegible] [illegible] [illegible] === [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ad [illegible] [illegible] tamen [illegible], [illegible] [illegible], [illegible] quantum ad effectum [illegible], [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] apparet [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] animas [illegible] [illegible] [illegible] [illegible] solutio [illegible]

[illegible] [illegible] [illegible] [illegible] anima [illegible] [illegible] [illegible] [illegible] [illegible] executoris [illegible]

[illegible] aut etiam [illegible] [illegible], ut etiam in hoc [illegible] [illegible] [illegible] [illegible] solent [illegible]

[illegible] in multis authenticis historiis atque [illegible] [illegible] [illegible] [illegible] executores, et [illegible]

[illegible] semper satisfaciunt, [illegible] [illegible] [illegible] [illegible] solutione [illegible], cum non [illegible] ante

[illegible] [illegible] non [illegible] [illegible] [illegible], [illegible] in [illegible] solutionis [illegible]. [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] solutione [illegible] [illegible] [illegible] cer-

[illegible] faciunt [illegible] [illegible] [illegible] et postea differunt [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] contra [illegible] et [illegible] [illegible] [illegible], [illegible] animas

[illegible] [illegible] [illegible] [illegible].

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible], et quia [illegible] [illegible]

[illegible] intelligant.

[illegible] primo, [illegible] [illegible] [illegible] et [illegible] [illegible] [illegible] [illegible], ut [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible], et [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], [illegible] [illegible] [illegible] [illegible].

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] non absolute sed respective ad [illegible]

[illegible]

[illegible]

[illegible]

[illegible] testator [illegible] restitutionis [illegible], aut conjugatis dari non potest. [illegible]

Responsio, quando legat aliquid [illegible] testator, et legato [illegible] consanguineos [illegible] intra decimum gradum [illegible] ante [illegible] [illegible] consanguineis [illegible] testator [illegible] inter consanguineos [illegible] [illegible] pauperes [illegible] [illegible].

[illegible]

[illegible] alligat.

[illegible] testator [illegible]

[illegible] testatoris praecepto fiat

[illegible]

[illegible]

[illegible] ex legato applicare poterit juxta [illegible] distributor pauperibus [illegible] potest et ipse sibi accipere [illegible] defectu conditionis [illegible] non habet, et inter [illegible] materialiter, formaliter [illegible]

[illegible] et a multis voluntatibus defunctorum in alium usum commutari possit.

[illegible]

[illegible] capite isto [illegible] quest. [illegible] ultima voluntas [illegible] observari debet; [illegible] contingit de Relictis Pauperibus ubi expresse decernit, quod ea, quae ad cer[illegible] [illegible] sunt [illegible] ad illas debeant, non ad alia [illegible]

converti ——

Dixi quod nisi adsit rationa[illegible] justa [illegible] Dni [illegible] in primo [illegible] ionem [illegible] reformatione cap. 5. [illegible] = in commutationib. [illegible] voluntatis, [illegible] ex ista [illegible] causa fieri debent [illegible] tanquam delegati Sedis Apost. summarie et extrajudicialiter cognoscant nihil in pre[illegible] [illegible] veritate [illegible] [illegible] narratis [illegible] commutationes praedicte executioni deman[illegible] [illegible] = [illegible] quod testator [illegible] fieri [illegible] fieri jubebit [illegible] [illegible] voluntas [illegible] [illegible] ad bonum commune [illegible] [illegible] contra [illegible] voluntatis [illegible] [illegible] causa [illegible] ad [illegible] [illegible] voluntate [illegible] [illegible] magis [illegible] testator [illegible] [illegible] [illegible]

[illegible]

tator jurit fieri non potest. [illegible] a testatore [illegible] [illegible] ad heredem [illegible] [illegible] testator [illegible] herede [illegible] [illegible] ad alia pia causa applicet, [illegible] herede aut executore ad executionem [illegible] aut executor [illegible] in hac [illegible] non [illegible] a testatore [illegible] testatoris [illegible] a voluntate testatoris [illegible] [illegible] constant ex capite nos quidem de testamentis et ex Tridentino [illegible] de reformatione.

Ac [illegible] ultimae voluntatis [illegible] videtur habere in [illegible] [illegible] [illegible] [illegible] potest plures lites componere, et extinguere.

Libri [illegible] Pars Altera

De contractibus onerosis.

De [illegible] contractibus onerosis [illegible] ad Theologum [illegible] in hoc contractu [illegible] [illegible] pertentat. [illegible] contractus [illegible] onerosus, et [illegible] justitiae [illegible] ab [illegible] [illegible] vero.

Caput I

De deposito, mandato, pignore, commodato et precario

[illegible] contractus [illegible] [illegible] gratuitos [illegible] Deposito [illegible] commodatum precarium [illegible] [illegible]

[illegible] I

[illegible]

Depositum significat contractum, quo res custodienda traditur alteri, ut eandem reddat non solum specie, sed etiam numero.

Est uno contractus quare [illegible] requirit consensus et deponentis [illegible] rem suam [illegible] committere, et depositarii qui significet se velle eandem in sua custodia accipere, quod aliquando fit explicite et aliquando implicite, quando scilicet aliquis ex officio ad rem quamdam depositam custodiendam tenetur, quales sunt cajonarii, tabularii, [illegible], tunc [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] in domo, vel [illegible] [illegible] officio depositum [illegible] [illegible] depositi esse certa, et non dubia signa [illegible] sunt, [illegible] [illegible] [illegible] [illegible] quare [illegible] [illegible] et aliis nisi specialiter [illegible] et [illegible] [illegible] [illegible] [illegible] cura [illegible] [illegible] ob [illegible] accidentia, et [illegible] [illegible] [illegible] ut non [illegible] accipere res sub lege depositi eo ipso quod [illegible] eas in domo sua [illegible] [illegible] consensus signo aliquo expressus accedat oportet.

[illegible] res [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] depositario

[illegible] in deposito [illegible] depositario [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] depositi [illegible] [illegible] [illegible] [illegible] [illegible] negligens [illegible] implicito in utriusque partis comodum cedente seu ratione officii, quod sibi, et aliis utile est, et quod [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] et de culpa levissima tenetur [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

Illud tamen advertendum, si res deposita [illegible] [illegible] [illegible] [illegible]

580 [illegible] sit sive dolo, sive culpa [illegible] monasterii, peut Ecclesia non teneri ad compensationem [illegible]

[illegible] in utilitatem ecclesiae vel monasterii aliquid conversum fuerit, [illegible] de depo-

[illegible] non [illegible] immunitatem, nec debet

[illegible]

[illegible] expresso vel tacito, vel [illegible]

[illegible] non [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] usus [illegible]

[illegible]

[illegible]

[illegible]

[illegible] conservo adstrict, [illegible] existimant,

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] in nulla [illegible] retinendum [illegible]

[illegible] casu fortuito periret [illegible]

[illegible]

[illegible] facultate sibi [illegible]

[illegible]

[illegible]

[illegible]

[illegible] contractus [illegible] aut [illegible]

[illegible] his qui ex publicis [illegible] [illegible]

[illegible] tanto convenit [illegible]

[illegible]

[illegible]

[illegible]

[illegible] solent

[illegible]

[illegible]

[illegible] alios non [illegible] representari [illegible]

[illegible]

[illegible]

[illegible]

[illegible] ubi sic dicitur [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] valet

II

[illegible]

[illegible]

[illegible] contractus quo quis officium [illegible]

[illegible]

[illegible]

168 el facile. nam si videas in tua oratione aliquando a me fieri, [illegible]

mandare ex lo. mot. cit. [illegible] gratuito. nam ut habet lo. praeff. hoc tit. — man-

[illegible]

[illegible] — [illegible]

[illegible]

Quaere primo, quaenam sint [illegible] mandatarii [illegible]

[illegible]

[illegible] tit. mandati [illegible] —

[illegible]

[illegible] generali mandato [illegible] ut [illegible]

[illegible]

[illegible] mandatario [illegible] officium [illegible]

[illegible]

[illegible] mandati [illegible]

[illegible] revocatione mandati ab ipso mandante [illegible]

[illegible] mandatarii [illegible]

[illegible] quod illud [illegible]

[illegible] interpretatione [illegible] mandatum revocare [illegible]

[illegible] institutionum titulo de mandato

[illegible]

[illegible] mandantis [illegible]

[illegible] mandatarius [illegible]

[illegible] mandatarii [illegible]

[illegible] mandatarius [illegible]

10 [illegible] mandantis [illegible] [illegible] [illegible]

[illegible]

[illegible] mandato [illegible] [illegible]

specialiter exacta erat.

Mandatarius ... procurator ... in l. ... ff. de procuratoribus, [illegible] mandatarii aut [illegible] [illegible] [illegible] ... l. ... ff. de procuratoribus, ... procurator ad negotia gerenda post decimum septimum ... [illegible] [illegible] curator ... sindici et procuratoris posse [illegible] administrari ante annum aetatis vigesimum expletum, ... etiam filius familias, etiam sine [illegible] aut [illegible] ... tamen ut sola ejus [illegible] ... [illegible] ... eant non [illegible] aut [illegible] aut [illegible]

[illegible] specialis [illegible] [illegible] habeat in [illegible] de procuratoribus in [illegible]

[illegible] [illegible] [illegible] quod [illegible] [illegible]

[illegible] actione mandati [illegible] mandante [illegible]

Qui

[illegible] ... aut principali

Quando vero aliquis contraxit in mandatario [illegible] potestati non obest, etiam adversus mandatarium [illegible] actiones [illegible] et mandatori [illegible] ff. de exercitoria actione. Sed quando persona in potestate alterius constituta sine jussu ejus expresso [illegible] sine jussu domini tamen pater aut dominus ex contractu [illegible]

Unde vulgo casus ist [illegible] servo suo pecuniam numeraverit [illegible] emerit [illegible] [illegible] mandato negotium [illegible] ff. de negotiis gestis [illegible] sarcire debet. Si tamen negotium [illegible] culpa lata et dolo, l. [illegible] ff. de negotiis gestis [illegible] non tenetur [illegible] administratione [illegible] ff. de negotiis gestis [illegible]

[illegible] utiles compensare [illegible] quod ex altero negotio administratione [illegible]

[illegible]

tam nemo curatione est [illegible] de eo quod sui impensis [illegible]

[illegible]

[illegible] et pretia et expense [illegible] sunt [illegible] tit. testamenti [illegible]

[illegible] ut omib. actio. et le [illegible] alimenta [illegible] de negotiis gestis [illegible] in curatione [illegible]

[illegible]

[illegible] ex mutuo consensu litigantis [illegible] Arbitratore [illegible]

[illegible]

Nemo ad communicandum in Arbitros cogi potest, ut [illegible]

[illegible]

[illegible] che [illegible] comat [illegible]
[illegible] grado quando [illegible] [illegible] continente
[illegible] quale [illegible] e rendere [illegible] le [illegible]
[illegible] e non [illegible] [illegible] questi [illegible] il [illegible] alle [illegible]
non [illegible] [illegible]
[illegible] aut [illegible]
[illegible] [illegible]
sua pecunia adstringunt.

[illegible] [illegible]
[illegible] compromissum [illegible] requirit [illegible] causa criminali
[illegible] non distinguemus [illegible]
[illegible] non probato [illegible] publica auctoritate [illegible]
[illegible] de transactione [illegible]
[illegible] poena sanguinis decreta est excepto [illegible]
[illegible] aliter [illegible]
[illegible]
[illegible] non [illegible] [illegible] compromitti [illegible] quando de matrimonii [illegible]
[illegible] aut [illegible] contra [illegible]
[illegible]
[illegible] judicatae [illegible]
[illegible] regamento [illegible]

[illegible]
[illegible] et compromissum inter eos [illegible] arbitri [illegible]
[illegible] voluntarii appellant, in [illegible]
[illegible] arbitri [illegible] [illegible]
compromissum [illegible] in causa [illegible] contra [illegible] omne [illegible]
aut.

oppo

[illegible] compromissi [illegible] arbiter [illegible]

terminos excedat [illegible] ut [illegible] Ulpianus in [illegible]

[illegible] tamen [illegible]

[illegible]

[illegible]

[illegible] quia constituunt [illegible]

[illegible]

[illegible] arbiter [illegible]

[illegible] compromissi [illegible] arbitro [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] ... in summa [illegible]

[illegible] transactio [illegible] institutio [illegible] ex[illegible]

[illegible] si res in judicio decisa foret ex l. non minorem [illegible] ubi expresse dicit [illegible] transactionem, quae vero jus [illegible] auctoritatem [illegible] transactionem bona fide [illegible] instrumenta et [illegible] transactio [illegible] eod. titu.

Scilicet transigentibus inter pacto, et [illegible] ejusdem [illegible] poena transactioni apposita, [illegible] fuerit, et tunc, pars illa quae recedit poenam solvere cogitur, et si poena non sufficit, cogitur solvere tantum [illegible] [illegible] transactione [illegible] poena [illegible] transactionem

[illegible] poena transigere [illegible] transactione [illegible] [illegible] transactio [illegible] difficultate [illegible] transigentes [illegible] [illegible] transactio [illegible] [illegible] rescindi [illegible] transactio in qua intercedit [illegible] transactionem [illegible]

[illegible] fratres [illegible] in testamento [illegible]

[illegible] Major [illegible] Minor [illegible]

Articulus III

De pignore et hypotheca [illegible]

[illegible] creditori, [illegible] aut [illegible] De hypotheca [illegible] de [illegible] [illegible]

[illegible] et modo [illegible]

[illegible] manu traduntur, ut dicitur [illegible]

[illegible] insecuritate [illegible]

[illegible] et hypotheca pro eodem [illegible] solent, ideoque [illegible] in [illegible] hypotheca de pignoribus et hypothecis, inter pignus et hypothecam nominis tantum sonus [illegible]

[illegible] tamen [illegible]

[illegible] tradit creditori [illegible]

[illegible] Hypotheca vero [illegible]

[illegible]

[illegible] in hypotheca [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] proportione [illegible]

de altero, et in utroque dominium rei [illegible] qui pignus dedit, vel hypothecam.

[illegible]

[illegible]

[illegible]

[illegible] administratione ex [illegible] officio [illegible]

de [illegible] quod privilegium [illegible] [illegible] transtulerunt [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] pro administratione [illegible] [illegible] [illegible] [illegible] in ultimis [illegible]

[illegible] [illegible] bonis [illegible] liberis. [illegible] uxor [illegible] [illegible] in [illegible] [illegible] [illegible]

[illegible] unica [illegible] [illegible] actione. [illegible] uxori [illegible] mariti bona eius in domo relictis iure [illegible]

tinis [illegible] [illegible] [illegible] [illegible] [illegible] in [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ad [illegible] [illegible]

veniat, et [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] mercedem.

[illegible] Pretorium est quod in executione [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] causa iudicati pignus captum sit. Pretoria magis pro

[illegible] [illegible] [illegible] [illegible] magistratu [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible]

[illegible] conventionale est quod [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] extendit non solum praesentia, sed etiam futura [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] [illegible] [illegible] [illegible]

[illegible]

[illegible] [illegible] venditionem [illegible] [illegible] [illegible] recipere [illegible]. Et [illegible]

[illegible] [illegible] [illegible] [illegible] non

[illegible]

[illegible] ex rei [illegible] [illegible] pertinet [illegible]

[illegible]

[illegible] de rei veritate [illegible] ex [illegible]

[illegible] tractum [illegible] in [illegible] [illegible] [illegible]

[illegible]

[illegible] ex [illegible] [illegible] mancet.

Recognovimus res [illegible] in [illegible] [illegible] creditori, [illegible] res [illegible] [illegible] non [illegible]

[illegible]

[illegible]

[illegible] negotii gesti repetere possit. Quamvis creditor res ex aliena [illegible] tamen si res [illegible] sciente domino, [illegible] conversa propter [illegible]

[illegible] quia solvi debitum [illegible] tamen [illegible] non manet.

[illegible]

[illegible] non [illegible] hypotheca, [illegible] vel [illegible] catalo sufficienti [illegible] vel [illegible] creditor [illegible]

[illegible] creditor non solvat. [illegible] creditores [illegible] accipere ex [illegible] res, quae non

[illegible]

[illegible] posteriori [illegible] che una vendita o espressamente [illegible] una cosa mobile [illegible]

[illegible]

[illegible]

[illegible] obligationes ejus, qui pignus aut hypothecam accipit.

[illegible] de damno sentito ex culpa levi [illegible] minoratitia actione.

[illegible] non solo [illegible] della cosa aliena [illegible] non [illegible]

[illegible]

e intemerato accento

[illegible] et valor [illegible]

[illegible]

[illegible] debitu[m] quo [illegible] ad totu[m] debitu[m], [illegible] actio et [illegible] [illegible] [illegible] [illegible] supere-
[illegible]

[illegible] vero si [illegible] [illegible] [illegible] compensatione [illegible] [illegible] contraria actio-
ne hypothecaria [illegible] petere [illegible] donec solvatur ipse pignus [illegible] retinere [illegible] [illegible] [illegible] [illegible] de
pigneratitia actione. Hoc[illegible] [illegible] si [illegible] [illegible] [illegible] [illegible] [illegible] oppignorata, [illegible] fructus oppigno-
ratos [illegible] [illegible] [illegible] tametsi partem [illegible] [illegible] [illegible] [illegible] creditor aut [illegible] [illegible] nomine hypothecae
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] etiam [illegible] [illegible] locatione aut venditione [illegible] [illegible]
[illegible] oppignorati manent quamdiu solo cohaerent [illegible] fundi pars [illegible] a creditore vindicari valent
[illegible] [illegible] [illegible] [illegible] [illegible] pignoris sermo recurret ubi de usura.

Ita creditor non tenetur pignus reddere nisi [illegible] totum debitum solutum fuerit; [illegible] pignoris indivisum [illegible]
[illegible] [illegible] pignoratitia. Quare tametsi unus ex heredibus debitoris solvat aut e contrario [illegible] uni ex here-
dibus creditoris sua pars solvatur, attamen non liberatur [illegible] pignus [illegible] singulae pignoris partes pro toto debito, et singulis ejus
partibus, atque etiam pro [illegible] obligantur.

[illegible] [illegible] [illegible] [illegible] termino [illegible] creditor [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] valide [illegible] servandum [illegible] creditor [illegible] debere
[illegible] [illegible] tempus [illegible] [illegible] [illegible] non [illegible]
[illegible] creditore [illegible] [illegible] tempore [illegible] [illegible] [illegible]
[illegible] [illegible] pignoris [illegible] debito non [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] de distra-
ctione [illegible]

[illegible] verba Jurisconsulti [illegible] [illegible] [illegible] nullo [illegible] [illegible] licentia [illegible]
[illegible] denunciatione [illegible] [illegible] [illegible] [illegible] [illegible] sententia [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] non valet [illegible] pignus [illegible] inutile [illegible] debitor [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] creditor hypothecas [illegible] de remissione pignoris.

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
pigno-

pignoris [illegible] [illegible] [illegible] dominus rei sed et novator vel ab ipso domino [illegible] [illegible] [illegible] 2.

constitutus Unde [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

non [illegible] debere [illegible] et a [illegible] qua [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

pignoris non [illegible] [illegible] [illegible] [illegible] [illegible] vendat tanquam rei dominus [illegible] [illegible] [illegible]

re [illegible] [illegible] [illegible] [illegible] vendat [illegible] a debitore non [illegible] [illegible] [illegible] [illegible] ex lege

aut judicis [illegible] vendere poterat [illegible] [illegible] [illegible] non cavit emptori. Ad [illegible] argumentum [illegible] [illegible]

circa pignus pertinet [illegible] quod communiter [illegible] [illegible] legis [illegible] [illegible]

Quaeritur, quid sit pactum [illegible] [illegible] [illegible] certo tempore

Pro [illegible] legis commissoriae [illegible] [illegible] [illegible] [illegible] tempore [illegible] [illegible] [illegible] [illegible]

pignus [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] pactum legis commissoriae quo

creditor intra terminum non [illegible] [illegible] [illegible] [illegible] et amittit [illegible] rei [illegible] [illegible] [illegible] non [illegible]

ex tempore praefixo.

Hoc enim lege [illegible] ad vitanda fraudes [illegible] [illegible] [illegible] debitoris [illegible] [illegible]

canonico iure [illegible] [illegible] [illegible] et [illegible] [illegible] [illegible] ex [illegible] [illegible] [illegible] pignore et [illegible]

significante [illegible] de pignoris [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] debitor [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] et creditor [illegible] [illegible]

[illegible] [illegible] [illegible] et consequenter usuras committeret. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] non [illegible] [illegible] [illegible] [illegible] creditor [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] creditor [illegible] [illegible] [illegible] [illegible]

Docent autem [illegible] communiter licere [illegible] [illegible] ad certum [illegible] solutio [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] arbitrio [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] intra certum tempus [illegible] [illegible] [illegible] emptionis [illegible] [illegible] [illegible] tunc

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] Nam creditor tunc [illegible] [illegible] [illegible]

[illegible] sed tantum sibi ipsi [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] indemnitate [illegible] Illicitum vero atque usurarium [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] aliquid supra sortem lucrari.

Fide

[illegible] contra[illegible] obligatione [illegible] seu [illegible] in

[illegible] obligationem [illegible] debitore [illegible]

[illegible] satisfacere creditori [illegible] ubi autem [illegible] obligationes [illegible]

[illegible] nec aliquid [illegible]

[illegible]

[illegible] sententia iudicis aut hoc sive alio [illegible]

[illegible]

[illegible] hypotheca [illegible] et in [illegible]

[illegible] in authentica de [illegible]

[illegible] creditori [illegible] creditori [illegible]

[illegible] fuit [illegible]

[illegible] obligati [illegible]

[illegible] obligationis [illegible]

[illegible] de delicto

condi

[illegible] tamen e contrario [illegible] obligatio [illegible]

[illegible] tamen [illegible]

[illegible] instrumento et [illegible]

[illegible] obligatio [illegible]

[illegible]

[illegible] de [illegible]

[illegible]

[illegible]

[illegible]

[illegible] contrarium [illegible]

[illegible]

[illegible]

[illegible] de [illegible] quod [illegible]

[illegible]

[illegible] in capite [illegible]

[illegible]

[illegible] marito [illegible]

[illegible] instrumento [illegible]

[illegible] tamen [illegible]

[illegible] mulier [illegible]

[illegible]

[illegible] mulier [illegible]

[illegible]

[illegible]

[illegible]

[illegible] sicut [illegible] in [illegible]

[illegible]

204 [illegible] ... renunciavit ... [illegible] ... in principali [illegible] ... [illegible]

[illegible] non [illegible] ... renunciare [illegible] ... restituere [illegible] ... collegaro [illegible]

[illegible] ... tunc [illegible] non ex [illegible] ... consequen-

[illegible] ... non [illegible] recepti, non recipient

[illegible] ... nulla fidejubeat, vel in dote alterius

aliquid promittat, [illegible] ultima [illegible] ... tantum [illegible]

[illegible] ... fidejubeat pro debito defuncti cujus

[illegible] ... [illegible]

[illegible] ... novavit obligationem [illegible]

[illegible] debito, [illegible]

[illegible] ... [illegible]

[illegible] ... se obligaverunt [illegible] pro eodem debito et creditor [illegible] convenit,

[illegible] ... [illegible]

[illegible] ... [illegible]

[illegible] ... [illegible]

[illegible] ... [illegible]

[illegible] ... [illegible] tamen [illegible] ... [illegible]

[illegible] ... alter respective creditor

[illegible] ... [illegible]

[illegible] ... hadriani beneficium illi non prodest, qui eodem [illegible] renunciavit

[illegible] ... [illegible]

[illegible] ... aut [illegible] aut ejus heredi [illegible]

[illegible] ... sententia [illegible] ... [illegible]

[illegible] solutione [illegible] ... [illegible]

[illegible]

[illegible] ... [illegible] institutione [illegible]

[illegible] *eremploti-* [illegible]

[illegible]

[illegible]

[illegible], *quod ratione fidejussionis invenit quando pro fidejussione pretiu accepit.*

[illegible]

[illegible] *quod proprie compensari debeat*

Quaeres denique, quando possit fidejussor agere contra debitorem, ut fidejussionis onere liberetur et quando obligatio fidejussionis expiret.

[illegible] *fidejussorem* [illegible]

[illegible]

[illegible] *si debitor fidejussori, aut fidejussor debitori* [illegible]

[illegible] [illegible] ... [illegible] certum ... tamen [illegible] magis utilis [illegible] erat [illegible] principalis [illegible] ... [illegible] ... inventum [illegible] ... [illegible] obligationis [illegible] creditori [illegible] ... [illegible] ... inter et creditorem [illegible] ... novatio [illegible] ante novationis [illegible] ad aliud obligationem [illegible] ... [illegible] tempore [illegible] ... in contrahendo [illegible] ... [illegible] tempore [illegible] et creditor [illegible] ... non tenetur resarcire damnum, quod creditor [illegible] ... [illegible] ... sit ad debitum consequendum.

[illegible] huius [illegible] in [illegible] ... [illegible] ... Nam capite 7 [illegible] potest creditor bona sibi specialiter obligata a tertio possessore immediate repetere, quamvis [illegible] principalis debitoris [illegible] ... Ex capite 7 [illegible] ... [illegible] ... [illegible] ... tamen [illegible] ... [illegible] ... [illegible] ... mandatum [illegible] debitorem [illegible] ... [illegible] ... et ad arbitrium [illegible] debitoris principalis bona sub hasta vendenda [illegible] ... [illegible]

[illegible] ... ne fit cautio pro persona et [illegible] ... [illegible] ... [illegible]

[illegible] [illegible] periculum [illegible] ad compensationem [illegible] ad compensationem [illegible] sancti Antonini [illegible] titulo cap [illegible] de contractu assecurationis [illegible] modo [illegible] — [illegible] valorem in mercimoniis in [illegible] [illegible] de submersione [illegible] a [illegible] [illegible] pro centenario, plus, vel minus secundum quod plus, vel minus timet de periculis, pro securitate [illegible] mercium [illegible] [illegible] in se periculum dicti loci [illegible] vel [illegible] pro centenario, si merces [illegible] [illegible] sine securitate [illegible] =

[illegible] ante assecurationem [illegible] in merces [illegible] periculo ad [illegible] [illegible] tamen [illegible] in alius [illegible] [illegible] [illegible] et [illegible] [illegible] ad [illegible] intra hoc tempus [illegible] perditione [illegible] [illegible] assecurationis [illegible] centenario [illegible] [illegible] assecuratio [illegible]

[illegible] pro assecurationis contractu assignare [illegible] [illegible] contrahentium aestimationem et [illegible] contrahentis [illegible] [illegible] in assecuratione [illegible] [illegible] assecuratio [illegible] ad [illegible] [illegible] assecurationem [illegible] merces [illegible] nullum [illegible] contractus [illegible] materia [illegible] assecuratio [illegible] [illegible] contrahentes [illegible] assecurationem [illegible] materia assecurationis [illegible] [illegible] [illegible] contrahentes [illegible]

[illegible] [illegible]

[illegible] ad [illegible] [illegible] tamen [illegible] [illegible] [illegible] [illegible] contrario, [illegible] certa [illegible] non [illegible] [illegible] ex [illegible] tamen [illegible] ex [illegible] intellectu [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] quantitate [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] qualitates [illegible] in contractu.

[illegible] contractus [illegible] assecurationis [illegible] conditionis [illegible], et de [illegible] illius [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ad conservationem rei alicuius, [illegible] pretio [illegible] periculum quod in se suscipit, ut si [illegible] merces [illegible] qualitates [illegible] contractu [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] merces aut [illegible] mercator [illegible] [illegible] [illegible] [illegible] [illegible] proportionem [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] aut [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] illius [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] negotiationes, et extra periculum merces suas constituere.

Caput IV

[illegible] mutuo [illegible]

[illegible] [illegible] utentis [illegible] [illegible] [illegible] communiter: contractus, [illegible] res aliqua [illegible] [illegible] gratuito concessa usque ad [illegible] tempus.

[illegible] contractus [illegible] [illegible] materia [illegible] res [illegible] [illegible] [illegible] nihilominus [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

Dicitur [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] intelligitur, si nulla mercede [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] mercede interveniente [illegible] [illegible] [illegible] [illegible]

[illegible] = [illegible] contingat [illegible] [illegible]

[illegible] conuentionem [illegible]

[illegible] magni prefii, si [illegible]

[illegible] commodatarius [illegible] commodati [illegible]

tamen commodatarius [illegible] ordinariam [illegible]

[illegible] et alia his similia [illegible]

[illegible] inconuenit.

[illegible] commodatae [illegible] commodatum [illegible]

[illegible] commodatarium [illegible] uel [illegible]

[illegible]

[illegible] commodatarium damna [illegible]

[illegible] uitiosa uasa commodauit [illegible]

[illegible]

[illegible]

[illegible]

[illegible] lex est in commodato. Quare [illegible]

[illegible]

[illegible] domino [illegible]

institutione de obligationibus quae ex delicto nascuntur, [illegible] uerba [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

re etiam alteri commodare

[illegible]

[illegible] domino non repetatur [illegible]

[illegible]

[illegible] et [illegible] [illegible] [illegible] [illegible]

[illegible] restitutione [illegible] commodati [illegible]

[illegible] commodati quod ad [illegible] iter ex hoc ad illud [illegible] commodati [illegible]

[illegible] quod [illegible] [illegible]

[illegible]

[illegible] commentar[illegible] [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] quod [illegible] [illegible] sola differentia est quod in priore casu rei proprietas [illegible] [illegible]

[illegible]

[illegible]

[illegible] et adhuc [illegible] pergat [illegible] commodatarii [illegible]

[illegible] et revocandi [illegible]

[illegible]

[illegible] et revocare [illegible]

[illegible]

[illegible]

[illegible] commodatarius [illegible] qui [illegible] ea occasione sibi [illegible]

[illegible] ittamen [illegible] ex inconsideratione commodatarii [illegible] hanc causam [illegible]

providere. Deinde illud inconveniens sequi posset [illegible] ratione non [illegible]. Iste [illegible]
[illegible] necessario et nota [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] contingere [illegible]
nata [illegible] quo tamen ipso donator, iuxta communem sententiam, [illegible] evictione minime tenetur.

Precarium definitur ab Ulpiano le. i ff. de precario in hunc modum: ═══ precarium est, quod precibus pe-
tenti conceditur [illegible] [illegible] quamdiu patitur, is qui concessit [illegible] [illegible] [illegible] precario [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] adjungitur in le sequenti tamdiu [illegible]
[illegible] [illegible] quamdiu [illegible] [illegible] [illegible] voluntate ═══ [illegible] non [illegible] [illegible]
[illegible] precario [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] necessitas [illegible] [illegible] [illegible] [illegible] arbitrio [illegible]
[illegible] tempore intervallo [illegible] [illegible] [illegible] velit. Unde [illegible] [illegible] non [illegible]
[illegible] [illegible] [illegible] [illegible] precario [illegible] a concedente.

[illegible] et revocatur precario [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
ad concedens [illegible] [illegible] [illegible] [illegible] [illegible] de precario.

[illegible] precario [illegible] [illegible] cui concessum [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] persona [illegible] [illegible] [illegible] [illegible] [illegible]
ejus qui concessit, sed ad ejus heredes, vel [illegible] transit et durat [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] concedentis [illegible] [illegible]
[illegible] [illegible] [illegible] nulla [illegible] translatio [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible]

[illegible]

[illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] de [illegible]

[illegible]

[illegible]

[illegible] ingenue [illegible] animare [illegible]

[illegible]

[illegible]

[illegible] numero [illegible] [illegible] sive [illegible]

[illegible] tradit alteri eo animo, ut [illegible] [illegible] ac [illegible] post [illegible]

Dicitur primo contractus, quo res numero, pondere vel mensura constant [illegible] materia [illegible]

[illegible]

[illegible] ad mensuram [illegible] ad numerum, ligna etiam aut lapides ad construendam domum [illegible]

[illegible] materia mutui esse [illegible] [illegible] [illegible]

et quae numero et mensura

[illegible] materia contractus, quae ipso usu consumuntur, vel consumptione [illegible]

[illegible]

[illegible]

[illegible]

[illegible] alterius [illegible] non [illegible]

[illegible] tradit alteri eo animo, ut [illegible] Nam mutuum non solo consensu [illegible] traditione perficitur. Deinde [illegible] mutuo dominium transfert in mutuatarium [illegible] [illegible]

[illegible]

[illegible]

non mutuatori sed mutuatario [illegible] [illegible]

[illegible]

[illegible] apud [illegible]

[illegible] sicuti

[illegible]

[illegible] in obligatione restituendi [illegible] bonitatis [illegible] mutatis [illegible]

[illegible] non sit [illegible] redacta [illegible]

[illegible]

[illegible] v.g. frumentum [illegible] non mutuum, sed permutatio [illegible]

[illegible] bonitatis sit ac res tradita [illegible]

Hac [illegible] distinguenda [illegible] duplex bonitas [illegible] valor [illegible]

valor [illegible]

accepta fuit. Extrinseca bonitas [illegible] quae provenit ab extrinseco et [illegible]

[illegible] commercio, vel ex auctoritate Principis, vel ex consuetudine [illegible]

[illegible]

[illegible] bonitate [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] quod formalis in extrinseco valore [illegible]

[illegible] monetam [illegible]

[illegible]

[illegible] non [illegible] contrario [illegible] monetam [illegible] tamen [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] determinatio temporis [illegible]

[illegible] quando [illegible] tempus vel acceptum videtur et mutuans [illegible] tempore [illegible] mutuata [illegible] ante [illegible] determinatum [illegible]

[illegible] tempore [illegible] quando mutuatur [illegible]

[illegible] mutuator [illegible]

[illegible]

[illegible] generaliter [illegible] mutuator [illegible]

[illegible] obligatione [illegible] [illegible]

[illegible]

Hic primo quidem [illegible] monasterium [illegible]

[illegible] Rectoris [illegible]

[illegible]

[illegible] sacramenti [illegible]

[illegible] canones [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] mutuo [illegible]

[illegible]

[illegible] aut [illegible] etiamsi [illegible] majores sint in [illegible] accesserit [illegible] [illegible] [illegible] post mortem [illegible] [illegible] [illegible] [illegible] constitutionis [illegible] Pater eius [illegible] filii [illegible] nisi [illegible] in [illegible] ad [illegible] ratione [illegible] [illegible] [illegible] [illegible] contracta.

Sed [illegible] sunt [illegible] in [illegible] [illegible] [illegible] ad [illegible] eorundem [illegible] et administratione

[illegible] non [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] mortuis [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] Patre [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] habuit [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] qui [illegible] [illegible] sui iuris [illegible] [illegible]

[illegible] [illegible] in [illegible] [illegible] eius [illegible] [illegible] nemo [illegible] [illegible]

[illegible]

[illegible] quia non ipsius [illegible] in [illegible] [illegible] [illegible] [illegible] [illegible] ad [illegible] [illegible] [illegible]

[illegible] introducta [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] publica introducta [illegible] communiter [illegible] [illegible]

[illegible] [illegible] remissione [illegible] [illegible]

[illegible] juramento [illegible] servari [illegible] volunt (Covarruvias, [illegible] [illegible] aliiq. Alii vero [illegible] [illegible] [illegible]

mutuo continuari juramento non posse docent quia juramentum non debet esse vinculum iniquitatis [illegible]

[illegible] contra bonos mores, vel in praejudicium [illegible]

[illegible] [illegible] dispositio [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] conscientiam [illegible]

[illegible]

Sententia [illegible] [illegible] [illegible] non solum [illegible] obligatione [illegible] [illegible]

[illegible] [illegible] tamen [illegible] [illegible] [illegible] [illegible] [illegible] contra [illegible]

[illegible] [illegible] [illegible] [illegible] condemnatus sit, nihilominus [illegible] [illegible] [illegible] [illegible] vel [illegible]

[illegible] exceptio [illegible] conscientiae [illegible] [illegible] [illegible] dispositio non [illegible] [illegible] internum [illegible]

[illegible] [illegible] conscientia [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] non restituant et [illegible] ac proinde [illegible] [illegible]

[illegible] autem sententia [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] aut prodere debuerit pecuniam a mutuatario turpiter vel inutiliter [illegible]

[illegible] alienis [illegible] Hoc [illegible] [illegible] [illegible] [illegible] [illegible] sententia [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] externa actione [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] mutuare [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible]

II

[illegible]

[illegible]

[illegible]

[illegible] Quare [illegible] a [illegible] [illegible] et [illegible]

[illegible]

Mutuum a manu [illegible] pecunia sive numerata, sive [illegible], et res omnis mobilis, aut immobilis [illegible] [illegible] [illegible] [illegible] [illegible] tractanda [illegible] [illegible] interrogatio, conversatio, preces apud aliquem interponendo, per eo qui sub hac conventione mutuat, et inde [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] constituant, de quibus [illegible] sermone [illegible] instituimus

[illegible]

[illegible] non [illegible] inter se [illegible] Non dicit autem [illegible] alio [illegible] probari.

[illegible] sufficit autem [illegible] ab [illegible] si aliquis [illegible] velit [illegible]

[illegible] super [illegible] implicite ac virtuale [illegible]

[illegible] titulo [illegible]

[illegible] vero, quod neque formaliter neque virtualiter [illegible]

[illegible]

[illegible]

[illegible] ... in capitulo ut ilterdum [illegible] patet.

[illegible]

[illegible] ... consensus erat.

Dividit [illegible] in appositivum et [illegible]. [illegible] formalis et expressa [illegible] ex mutuo [illegible] et explicito [illegible] consensu [illegible] [illegible] ... illa [illegible]

[illegible]

[illegible]

XIV [illegible]

[illegible]

[illegible]

[illegible]

[illegible] anno 17[illegible] [illegible]

[illegible] Benedictus XIV [illegible]

[illegible]

ita

[illegible] moderatis ultra sortem integri [illegible] [illegible] interpretationes et [illegible] Pontifex quid ipsa verba exhibent [illegible] ap. 47 [illegible]

Demonstratur 2.da pars propositionis [illegible] Psalmo 14 [illegible] Domine quis [illegible] in tabernaculo tuo? ... qui pecuniam suam non dedit ad usuram [illegible] — [illegible] [illegible] et dignum habitatione caelesti qui pecuniam non dedit ad usuram: si ergo qui non dedit [illegible] maledictus qui ad usuram dedit — [illegible] in hunc locum [illegible] [illegible] qui habitaturus est [illegible] generaliter [illegible] Propheta Ezechiel cap. 18 gravissimis peccatis usuram [illegible] — Quod si [illegible] [illegible] sanguine et uxorem proximi sui polluerit [illegible] et pauperem contristantem [illegible] et ad idola levantem oculos suos abominationem facientem ad usuram dantem et amplius accipientem [illegible] non vivet [illegible] universa haec detestanda [illegible] morte morietur — [illegible] testimonia usuras [illegible] absolute damnant nullo facto [illegible] parvas vel magnas [illegible] ergo [illegible] usuram [illegible] Testamento [illegible] exerceat

[illegible] in [illegible] traditione [illegible] manifeste [illegible] [illegible] [illegible] Christus [illegible] [illegible] [illegible] affirmantia non [illegible] semper [illegible] negati[illegible] [illegible] praedicat [illegible] [illegible] semper et [illegible] Quare [illegible] III usuras [illegible] utriusque testamenti [illegible]

[illegible] ad [illegible] traditionem pertinet [illegible] auctoritates [illegible] testimonia [illegible] Basilius in [illegible] usuras [illegible] in maximis malis [illegible] in [illegible] —

foeneratoris mercede, qui latrocinium nominaverit non [illegible] a vero aberraverit. Quid enim refert an clam-
[illegible] perfossis muris praedonis more aliena rapias, an foenore necessitate [illegible] que ad te non pertinent —
[illegible] Chrysostomus homilia [illegible] in caput [illegible] Genesis ait — Deus prohibuit ne [illegible] usurai acciperet quia
uterque magno damno afficitur. [illegible] [illegible] quidem inopia [illegible], creditor autem peccatorum sibi cumulat multi-
tudinem — [illegible] ne [illegible] [illegible] [illegible] [illegible] [illegible] in Psalmum 36 sermone [illegible] —
si foeneraveris [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] sive vinum sive oleum sive quodlibet aliud [illegible] quam dedisti [illegible]
accipere foenerator es [illegible] improbandus — [illegible] loquuntur, ut vel ipsi [illegible] inter haereticos
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] Patribus reprobari

[illegible]
[illegible] sed argumenta [illegible] in [illegible] [illegible] contra [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
quae accipere [illegible] pecunia mutuata [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] evidentia scienda [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible]
[illegible]
[illegible]
[illegible] iniustitiam committit qui mutuat vinum aut triticum [illegible] [illegible] [illegible]
[illegible]
[illegible]
[illegible]

[illegible]
[illegible]
[illegible]

[illegible]

[illegible] ... [illegible] et ea acquirant [illegible] ... quod est aliquid amplius exit pro jure [illegible] ... [illegible] quia propter [illegible] ... [illegible] non cavebat [illegible] nisi contra ac [illegible] ... simul cum [illegible]

Demum jus naturae vetat domino rei vel sacrae vendere. [illegible] ... nisi ad usum seu consumptionem. [illegible] ... absolutum et indepen[illegible] ...

[illegible] satis objectionis.

[illegible] ... humani [illegible] ...

[illegible] ... humanae [illegible] ...

[illegible] ... [illegible] imaginaria utilitates [illegible]

[illegible] ... [illegible] ...

[illegible] ... seditionum ac discordiarum causa [illegible] ...

[illegible] ...

provincias permittit, ac [illegible] jurisdictione [illegible] a Sede Apostolica praescriptas fuerint.

Statuerunt contra [illegible] Leo X in concilio [illegible] V [illegible] sacro approbante concilio non solum [illegible] montes pietatis [illegible] communicationis [illegible] sententia [illegible] montes praedicare [illegible] montes pietatis nihil [illegible] montes [illegible] [illegible] [illegible] [illegible] [illegible]

Post [illegible] [illegible] [illegible] contra [illegible] montis [illegible] Romani [illegible] [illegible] [illegible] [illegible] praesentatione [illegible] montis [illegible] convenire.

[illegible] montis [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] montes illi [illegible] in necessitate [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] montis [illegible] [illegible] contenderent. [illegible] Romani Pontifices, et Concilium Lateranense V [illegible] [illegible] [illegible]

[illegible]

jam

[illegible]

[illegible]

[illegible]

[illegible] homo [illegible] ad [illegible] [illegible] occidere [illegible] a [illegible]

[illegible] simpliciter malum [illegible]

[illegible]

[illegible]

[illegible] 55 —

[illegible] respondent S. Ambrosius li. de Tobia cap. 15, quod Deus non permisit [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] si erat hom alienigena ait S. [illegible] Amalech [illegible]

[illegible] legitime [illegible] ad hoc [illegible]

quod non sit crimen occidere = =

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] Quod [illegible]

[illegible]

212 [illegible] consequenter [illegible] ut [illegible]

[illegible] XIV [illegible]

[illegible] obligatione [illegible]

[illegible]

[illegible]

[illegible] Exod. XX [illegible]

[illegible] diligentis, et pauperis fratris tui [illegible]

[illegible]

[illegible]

[illegible]

Praeter hac [illegible] in [illegible] et [illegible] objecto testimonio [illegible]

[illegible] indiget [illegible]

[illegible]

[illegible] non habet [illegible] et [illegible] indiget. Hec [illegible] verba [illegible]

[illegible], textus ille ad pauperes non restringantur [illegible]

[illegible]

[illegible] verba [illegible]

[illegible] in eadem cum ipsis civitate ac [illegible]

Objiciunt contra argumentum [illegible]

[illegible]

[illegible] exemplum Christi [illegible]

[illegible]

[illegible]

[illegible]

Salmasius [illegible] defensor [illegible] verba [illegible]

[illegible] Basilius inter Graecos [illegible] nempe

[illegible] ideo quantu [illegible] [illegible] Domu [illegible]

[illegible]

[illegible] non eius [illegible] uxor crescenta [illegible]

[illegible] non teneo sed [illegible] pecunia [illegible] non tenes [illegible] mutuare [illegible] mutuans [illegible] utendi et mutuari [illegible] mutuata [illegible] aliquid [illegible] estimari [illegible]

[illegible] ingenua [illegible] non tenes tamen non [illegible] aliquid exigere [illegible] ultra [illegible] vini [illegible]

[illegible] vini [illegible]

[illegible]

[illegible]

[illegible] pecunia [illegible] pretio æstimabile [illegible]

[illegible] mercatori [illegible] licet

[illegible] pecunia [illegible] pretio æstimabile non tamen [illegible]

[illegible] discrimen inter [illegible]

[illegible]

[illegible] pecunia [illegible]

[illegible]

[illegible] contra [illegible]

[illegible] pecunia [illegible]

[illegible] mercator [illegible]

[illegible]

[illegible] pecunia [illegible]

[illegible]

[illegible] ex [illegible] [illegible]

[illegible]

[illegible]

[illegible] ex [illegible]

[illegible]

[illegible] compensatio [illegible] ——— Quamvis [illegible] mutuator [illegible] beneficium, non ideirco propter hoc [illegible]

[illegible] aliquid [illegible] [illegible]

mutuatarii [illegible] beneficium [illegible]

[illegible]

[illegible]

[illegible] in certo [illegible]

[illegible]

[illegible] ex [illegible] obligatione [illegible]

[illegible] obligatione [illegible]

[illegible]

[illegible] beneficio [illegible] obligatio [illegible]

[illegible] obligatio [illegible] compensatione [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] non aliud [illegible] hodie [illegible] nec [illegible] area [illegible]

[illegible] eius commercia [illegible] causa [illegible] et industria [illegible] industria [illegible]

[illegible] ubi [illegible] nec [illegible] sunt [illegible] evenit [illegible] aut non [illegible] quam [illegible]

[illegible] sunt ut id [illegible]

[illegible] ad [illegible] nemo [illegible]

[illegible]

[illegible] 1

[illegible]

[illegible] ut in omi mutuo [illegible] sumat in [illegible] numerata pecunia [illegible] leges [illegible] manu quod alter [illegible] ut [illegible] aliud [illegible] in omi mutuo concurrit. [illegible] nulla [illegible]

[illegible]

locare laborem [illegible] numerare [illegible] nulla [illegible] simonia erit locare labores [illegible] majori. Attamen [illegible] mutuator operam alterius [illegible] in [illegible] vero, qui suos famulos et ministros conductos habet ad res numerandas [illegible] cum [illegible] cessante lucro aut damno emergente [illegible]

[illegible] II

[illegible] sortem quidem [illegible] orta ex [illegible] mutuatus [illegible] ob paupertatem [illegible] sua se mutuatori [illegible] numerata [illegible] eamus numeranda et [illegible]

[illegible] mutuo [illegible] et et sed simul retineat. Ergo cum pro [illegible] mutuum non liceat aliquid supra sortem recipere nec propter [illegible] nec [illegible] licitum esse potest.

[illegible] annuatim [illegible] alicui recreatio in [illegible] [illegible] non est [illegible] in vel [illegible] nemo contradicit: cur non pro [illegible] [illegible] communi [illegible] aliis [illegible]

[illegible]

[illegible] hoc [illegible]

[illegible]

[illegible] ex [illegible] ac [illegible]

[illegible]

[illegible]

[illegible] et [illegible] non sit nimium [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

sentē de [illegible]

[illegible] sanctā et [illegible] erit.

[illegible] XI [illegible]

[illegible]

III

[illegible]

[illegible] Alexandri VII [illegible]

[illegible] Conventus [illegible] an. 1700

[illegible]

[illegible] ac determinatū tempus, determinatū [illegible]

[illegible]

[illegible]

[illegible]

... [illegible] sicut patet in hoc pro [illegible] ... [illegible]

[illegible] ... mutuato, eo magis deneganda [illegible] ...

[illegible] ante triennium ex alia [illegible] vel ex liberalitate [illegible]

[illegible] non [illegible] ...

[illegible] ... in contractu mutui [illegible] ...

[illegible]. Atqui si non compensaret, obligatio non [illegible] ...

[illegible] ... [illegible] a mutuo. [illegible]

[illegible] negotiationis instrumentum [illegible] ... ille suscepit, qui artis instrumento se privat. ergo [illegible]

[illegible] intentione [illegible] ...

[illegible] ... [illegible] ...

[illegible] ...

intra triennium [illegible] mutuatum [illegible] ...

[illegible] mutui [illegible] per triennium privat se facultate utendi sua pecunia ad licitam negotiationem [illegible]

[illegible] ... [illegible]

[illegible]

[illegible] ... probatione [illegible], quod mutuum [illegible] et obligatio mutui [illegible] ...

[illegible] ...

[illegible] ...

[illegible] mutuant [illegible] ...

[illegible] hoc [illegible] exemplo [illegible] illa [illegible] ad agru[m] non [illegible] non [illegible] [illegible] salvis [illegible] ille, in cujus gratiam se obligavit. [illegible] mercatoribus reddere [illegible] pecuniam cum facultate utendi in [illegible] tantu[m] [illegible] acceptus [illegible] hac [illegible] [illegible]

[illegible] mutuu[m] et [illegible] [illegible] non [illegible] hoc anno [illegible] sed [illegible] anno sequenti [illegible] anno sequenti [illegible] non tamen [illegible] anno et [illegible] anno [illegible] [illegible] manet [illegible]

[illegible] argumentu[m] [illegible] momenti; nam facultas utendi [illegible] non [illegible] pecuniam [illegible] inter manus mercatoris [illegible] quod pecuniam [illegible] non minus [illegible] anno sequenti [illegible] facultate utendi [illegible] hoc anno [illegible] in communi hominum [illegible] [illegible] anno sequenti [illegible] anno sequenti [illegible] [illegible] utendi tempore praecedenti. [illegible] [illegible] non [illegible] [illegible] [illegible] [illegible]

[illegible] mercator [illegible] mercatoris [illegible] [illegible] [illegible]

[illegible] [illegible] non [illegible] [illegible]

vel

[illegible]

IV

[illegible]

III

[illegible]

[illegible] mutuato [illegible]

[illegible] periculum [illegible]

[illegible] mutuato [illegible]

[illegible]

[illegible] distingui in ordinarium et extraordinarium, sive [illegible]

[illegible]

[illegible] mutuator [illegible] sive ordinarium, sive extraordinarium [illegible]

[illegible]

Conclusio I

[illegible] mutuator [illegible]

[illegible]

[illegible] mutuatorii [illegible] alteri solvitur casu possit [illegible]

[illegible] mutuatario [illegible]

[illegible] valeret [illegible] pro compensatione contracta, potest mutuans justum pretium accipere, [illegible] quilibet alius, qui istud [illegible] est. Ergo etc.

[illegible] IX [illegible]

Dices

[illegible] varii [illegible] [illegible] ... [illegible]

[illegible] ... [illegible]

[illegible] ... [illegible]

[illegible] ... in textu [illegible] ... [illegible] decem solidos vel alio tempore [illegible] ... [illegible]

[illegible] ... [illegible]

[illegible] ... quod [illegible] ... [illegible] ... [illegible]

II

[illegible] ... [illegible]

[illegible] ... exigendi aliquid [illegible]

[illegible] ... [illegible]

melior

[illegible] *Atque si titulo* [illegible] *ultra* [illegible]

[illegible]

[illegible] *apud se* [illegible]

[illegible] *parte* [illegible] *testimoniis* [illegible]

[illegible]

[illegible] *Deinde* [illegible]

[illegible] *periculo* [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

III

[illegible]

[illegible] *titulo* [illegible]

[illegible] *conditione* [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] *hypothecam* [illegible]

[illegible] causa [illegible] aut obligati [illegible] tiones ita reprimuntur, ut vel una [illegible]

[illegible] nomine [illegible] se parcissime [illegible] intrinseci [illegible] extrinseci [illegible] habet [illegible] tradit, aut legi [illegible] aut prodigis, aut illis, qui [illegible] ad [illegible] mutuat [illegible] distinguit, sed tantum vult [illegible] mutuat, quod [illegible] periculo [illegible]

Sed observatis his conditionibus [illegible] dici debet [illegible] colaris exigit? Ego, ut ingenue dicam quod sentio, [illegible] ponere, et vos ipsos in dirimenda lite judices constituere.

Problema

[illegible] fuerit [illegible] tamenti in [illegible]

[illegible] approbavit, et typis Romae editum [illegible] an. 1645 [illegible] interrogata fuerit Sacra Congregatio [illegible] mutuo triginta pro centum [illegible] licitum pro [illegible] mutuo, licet non interveniat [illegible] aut damnum emergens, praedictum pro centum triginta [illegible] congregatio [illegible]

[illegible]

nihil est [illegible] ultra sortem [illegible] si vero aliquid recipit ratione periculi probabiliter imminentis, prout in casu non est inquietandus, [illegible] servata proportione inter [illegible] et [illegible] [illegible] sub excommunicatione latae sententiae et [illegible] [illegible] observarent et [illegible] statuent

[illegible] auctoritate [illegible] [illegible] [illegible] capitale

[illegible] quando aliquid ultra sortem [illegible] ratione periculi particularis et extraordinarii ut [illegible] [illegible] tamen habenti illud non exigit ratione [illegible] mutuo intrinseci, sed ratione alicujus extrinseci [illegible] quod non provenit ex [illegible] mutuatarii [illegible] [illegible] mutuator non tenetur [illegible] gratis exponere. Ergo

Praeterea [illegible] mutuo [illegible] separari potest et saepe separat [illegible] periculum [illegible] pro assecuratione sortis [illegible] cautione [illegible] ut [illegible] hoc cautionis munimine [illegible] exigere [illegible] [illegible] pretio [illegible] [illegible] gratis [illegible] [illegible] damna [illegible] valeat [illegible] [illegible] [illegible] difficultate [illegible] obtinendi [illegible] [illegible] mutuatarii [illegible] mutuator potest [illegible] manu [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] Proponunt [illegible] sed [illegible] [illegible] [illegible] [illegible]

Quis

Quis vero nequa non censeret hanc legem incertam? [illegible] Romani [illegible] [illegible] reputaverint? [illegible] ea dispositione quemadmodum alios aliorum [illegible] Apostolica [illegible] seculo tolleravit respectu [illegible] christianorum antequam ad definitivam sententiam devenerit [illegible] [illegible] inter [illegible] inquietandos non [illegible] donec sanctissima [illegible] sedes Apostolica aliud ordinaverit. Porro sedes Apostolica post annum [illegible] hanc propositionem damnavit an. 1679 ——— [illegible] pecunia sit pretiosior numeranda et nullus est, qui non majoris faciat [illegible] presentem, quam futuram: potest creditor aliquid ultra sortem [illegible] exigere et eo titulo ab usura [illegible] — [illegible] propterea majoris faciunt homines pecuniam presentem quam futuram [illegible] pecunia presens [illegible] futura vero plures [illegible] ergo [illegible] propositio [illegible] [illegible] existimanda est.

Ad alterum argumentum ex auctoritate [illegible] [illegible] assignant hoc discrimen pecunia mutuata non [illegible] majoris [illegible] minoris pretii [illegible] non licet in mutuo pretium augere [illegible] in emptione ac venditione [illegible] quia mercator [illegible] do merces [illegible] plura [illegible] [illegible] perveniant [illegible] perveniunt propter hec ante [illegible] mercator [illegible] augere [illegible] de pecunia mutuata [illegible] merces quae [illegible] dominium [illegible] [illegible] non [illegible] ad pretium pro hoc [illegible] [illegible] [illegible] mutuatis [illegible] [illegible] [illegible] [illegible] periculum [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] non posse [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible]

inter sortem nihil [illegible] nihil [illegible] [illegible] [illegible] [illegible]

[illegible] mutuo extrinseca et [illegible] accidens [illegible] [illegible] periculum [illegible] extrinsecum [illegible] [illegible] [illegible] qui [illegible]

[illegible]

[illegible] sui mediante ad [illegible] [illegible] ad superiorem [illegible]

[illegible]

[illegible]

[illegible]

[illegible] opera personae, communicatis per vinculis communicatis [illegible] Omnis. [illegible] in humana societate [illegible]

[illegible]

[illegible] indemnitate [illegible] per media [illegible] ad [illegible] periculi [illegible]

[illegible]

[illegible]

[illegible]

[illegible] inter alios S. Gregorius [illegible]

[illegible] de multo nautico periculo vel [illegible] et extraordinariis [illegible]

[illegible]

[illegible] Evangelica [illegible]

[illegible]

[illegible]

[illegible] contractu [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

dicamus

[illegible]

[illegible]

[illegible]

[illegible] annona [illegible]

[illegible]

[illegible]

[illegible]

contra

[illegible]

[illegible] damni emergentis, lucri cessantis [illegible] [illegible] conditio [illegible]

[illegible]

[illegible]

[illegible] damni [illegible] dicendum [illegible] mutuatarius [illegible]

[illegible]

[illegible] mutuanti [illegible] hanc [illegible]

[illegible] continere [illegible] damni [illegible] offerat [illegible] [illegible] compensationi [illegible] tamen [illegible] postea [illegible] nec [illegible] nec [illegible] jure [illegible] contractus mutui [illegible] [illegible] ad [illegible]

[illegible] damni compensatione [illegible] mutui [illegible] Quod si mutuatarius se obligare vellet ad [illegible] [illegible]

[illegible]

[illegible] propter [illegible] ergo si damnum [illegible] certo futurum sit, et incertum solum [illegible] de maiore vel minore damni quantitate [illegible]

[illegible]

[illegible]

[illegible] et indubitate quod

potest

[illegible] causis emergere [illegible] [illegible]

certa, aut saltem probabiliter futura [illegible] [illegible]

[illegible] quantitate [illegible]

[illegible] in casu [illegible] in [illegible]

[illegible] [illegible]

qui necessitate [illegible] [illegible]

Ita, ut ubique conditio [illegible] non exigat ante tempus, quo damnum [illegible]

[illegible] multa [illegible]

vel pro damno futuro praeservandi ... [illegible] ... non [illegible]

[illegible] tempore quo damnum emerserit, [illegible] damni [illegible]

[illegible]

Sed ad rem [illegible] [illegible]

[illegible]

[illegible] lucro [illegible]

[illegible]

[illegible] lucrum cessans [illegible] erat [illegible]

[illegible] [illegible] erat [illegible]

[illegible] lucrum cessans a damno emergente [illegible]

[illegible] lucrum vero cessans [illegible]

[illegible]

[illegible] [illegible] moraliter certum [illegible]

[illegible] Ex. gr. Cajus paratus pecuniae habet [illegible]

[illegible] qui [illegible] in centum, [illegible] in certum [illegible]

[illegible] in quantitate [illegible]

[illegible] et familiae honeste vivere [illegible]

[illegible] una [illegible] amica [illegible]

[illegible] separatio [illegible]

[illegible]

[illegible] possit [illegible]

[illegible] incolumis [illegible]

[illegible]

[illegible] conditione.

[illegible]

[illegible]

[illegible] Dub. consequentia: Ubi [illegible]

[illegible] ad [illegible]

[illegible] certo [illegible]

[illegible] conservatione [illegible]

[illegible]

[illegible] conservationem [illegible]

[illegible]

[illegible] non [illegible] in [illegible] non [illegible]

[illegible], et potest impediri multipliciter ab habendo [illegible]

[illegible] conservationem [illegible]

[illegible] impediri [illegible]

Ceterum

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] ad respondendum. ita [illegible] non [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] conversatione [illegible] [illegible]

re [illegible] et negotiorum — De lucro [illegible] S. Thomas non debet mutuatori [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

aut ingenium [illegible] mutuator [illegible] [illegible] et multis modis [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] conversatione [illegible] [illegible] [illegible] [illegible] pecunia non [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] et [illegible] impeditive

Dicendum in [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] mutuans [illegible] pecuniam non [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible]

[illegible] pecunia [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible]

non [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] pecuniam [illegible]

ideo destinaverit mercaturae, aut [illegible] [illegible] [illegible] [illegible] [illegible] voluntatem [illegible] facultatem [illegible]

[illegible] [illegible] pecuniae, [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] non destinaverat pecuniam [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] lucrum ex pecunia, tunc ex pecunia

[illegible] [illegible] lucrum [illegible] [illegible] [illegible] [illegible] [illegible]

Quod si mutuator [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

non [illegible] lucrum ob mutuatam pecuniam cessare. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

12 : ? [illegible] non [illegible] pecuniae [illegible] [illegible] [illegible] et [illegible] dixerit

[illegible] quia [illegible] [illegible]

[illegible] per omnique [illegible] [illegible]

[illegible]

[illegible] quia [illegible]

[illegible] [illegible] quas [illegible] [illegible] [illegible]

[illegible]

[illegible]

[illegible] [illegible] numerus [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

quas [illegible] [illegible] Hoc ante [illegible] ut aliquid pro [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Articulus IV.

e ... quaestio

[illegible]

[illegible] de pacti[illegible]

[illegible]

[illegible] Haec prior conditio confirmatur auctoritate [illegible]

[illegible] in fraudem creditorum.

[illegible] non poenit nisi volenti et convenienti:

[illegible]

[illegible]

[illegible] et debitor vere sit in culpa non solvendi [illegible] terminus [illegible]

[illegible] ... mortis, [illegible]

[illegible] ... conventio[illegible]

[illegible]

[illegible] ... conventionales ... [illegible]

[illegible] ... conventionali ... [illegible]

Articulus V.

De usura lucratoria, [illegible]

[illegible]

[illegible]

[illegible] ... vel ex alia ... [illegible]

Queres primo an valeat in pactis ... amicitiae ... [illegible]

[illegible]

[illegible] ... amicitiae ... [illegible]

[illegible] ... sibi vel alteri ... [illegible]

[illegible] ... aliquid justo pretio vendat ... [illegible]

[illegible] ... ex amicitia praestari.

[illegible] ... amicitiae ... [illegible]

[illegible] ... S. Thomas ... [illegible]

[illegible] ... pacta, quae obligationes ... [illegible]

[illegible] ... ex pacto ... [illegible]

[illegible] ... justitia deberet ... [illegible]

[illegible]

[illegible] ... mutuatario ... [illegible]

[illegible] ... nihil ... aliud ... [illegible]

[illegible]

[illegible] ... non [illegible]

R. probabilius [illegible] posse mutuatario [illegible] tantum [illegible] ... ut dives pauperem [illegible] ... ab alio habere non potest. [illegible] ... super obligationem [illegible] ... ab obligatione [illegible] contracta non deficiat. [illegible] ... si non sub hac specie [illegible] ... in [illegible] mutuatori [illegible] huiusmodi [illegible]

[illegible]

[illegible] mutuo [illegible] aliter [illegible]

[illegible]

[illegible] inequalitatem.

[illegible] ... tamen [illegible]

[illegible] ... obligatio mutuandi [illegible] ... non est [illegible] ... non mutuatum [illegible]

[illegible] non [illegible] in [illegible] mutuatarii nullo [illegible] Quia tamen magnum periculum [illegible] con-
ventionis, hae pacta dissuadenda sunt [illegible] nihil in praxi refert, utrum [illegible] per modum conditionis sine qua non, an per modum obligationis [illegible]

[illegible] gratitudine mutuatarii [illegible].

[illegible] quod [illegible] obligationem ex caritate aut alia virtute pariter urgente [illegible] utilitatem mutuatarii [illegible] contra caritatem [illegible] incommodum mutuatario afferret [illegible] neque gravet [illegible] attendendum [illegible] quod mutuatarius [illegible]
executione [illegible] gravamen et damnum quod in ipsa obligatione [illegible] executio [illegible]

[illegible]

[illegible] gratitudinis [illegible] magni momenti [illegible] non [illegible]

[illegible] veritate [illegible] obligatio [illegible] [illegible] [illegible] non [illegible] [illegible] quod [illegible] sed quod [illegible]. [illegible] nulla [illegible] obligatio in conscientia [illegible] tamen [illegible] [illegible] et humanas [illegible] [illegible] in cui homines honesti [illegible] non audent

[illegible] [illegible] [illegible] injustitia [illegible] obligatio restituendi. Atqui in nostro casu [illegible] obligatio [illegible] [illegible] pacto, ut mutuatarius [illegible] mutuare debeat, [illegible] [illegible] non apparet [illegible] debeat restituere. ergo.

[illegible] communi sententia [illegible] integra [illegible] obligatio [illegible] mutuator [illegible] [illegible] mutuator [illegible] obligationi [illegible] [illegible] jure [illegible] obligatione [illegible]

[illegible] restitutio [illegible] habet [illegible] mutuatarii obligatio ex [illegible] et [illegible] et officina mutuatoris [illegible] [illegible] ut [illegible], nec mutuatarius [illegible] [illegible] [illegible] [illegible] [illegible] aut [illegible] [illegible] mutuanti venire [illegible] [illegible]

[illegible] [illegible] ex communi sententia, [illegible] [illegible] [illegible] [illegible] aut [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] mutuo [illegible] [illegible] [illegible]

[illegible]

[illegible] mutuatarium, ut [illegible] mutuo [illegible] in [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] mutuo [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] in mutuo [illegible], [illegible] [illegible] [illegible]

[illegible]

[illegible] mutatione [illegible] monetae [illegible]

[illegible] mutatarius [illegible] indiscernit [illegible] eadem pretio [illegible]

[illegible]

[illegible]

non pro [illegible] tempore [illegible] mutua.

[illegible] eadem [illegible] in [illegible] specie physica.

[illegible]

[illegible] utriusque contrahentis conditio [illegible] aequalis [illegible]

[illegible]

non quando utrumque [illegible] probabile.

[illegible]

[illegible]

[illegible]

[illegible] inter in [illegible]

[illegible]

[illegible]

[illegible]

[illegible] mutuatarius [illegible] recipient mensuras [illegible]

[illegible] minoris [illegible]

[illegible] propter diminutione [illegible]

aequivaleant uni antea acceptae [illegible] formaliter [illegible] acceptae [illegible]

[illegible]

[illegible] non servavit aequalitatem

[illegible] [illegible] et [illegible] non [illegible] in specie physica, sed solum [illegible] in valore, quod [illegible] mutui, sive [illegible] monetae [illegible] sive minutus, [illegible] tempore mutui haec mutatio non fiat, [illegible] [illegible] quod habuit monetam tempore mutui tantum [illegible] in aliis vero [illegible] debet in eam quantitatem [illegible] [illegible] sive [illegible] sive decreverit, quando tempore mutui haec mutatio non [illegible] nec ad eam attendit. hoc [illegible] secundum [illegible], et [illegible] mutui [illegible] tantundem ejusdem speciei, [illegible] [illegible] quare qui [illegible] hanc intentionem habere [illegible], [illegible] non [illegible], et ita praxis observat, quae [illegible] in [illegible] intentione communi. Quod [illegible] [illegible] [illegible] [illegible] mutui [illegible] in [illegible] [illegible] temporis [illegible] [illegible] est [illegible] [illegible] [illegible] quo tempore [illegible] quantitatem [illegible] [illegible] [illegible] est

[illegible] [illegible] contractus [illegible] vulgo dictus a [illegible], qui [illegible] in [illegible] nostra frequentissimus est, [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] et ego [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] et ego [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] decennio [illegible] [illegible] mea et ego decennio [illegible]

Potest etiam [illegible] contractus [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ut unus [illegible] [illegible] alter vero [illegible] hunc contrahendi [illegible] [illegible] et [illegible] [illegible] [illegible] [illegible] quantitas [illegible] [illegible] utriusque rei.

[illegible] [illegible] ab uno [illegible] et ab altero [illegible] [illegible] contractus illicitus, et [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] voluerit [illegible] [illegible] [illegible] et [illegible] [illegible] fructus ex re [illegible] [illegible] fructus ex re [illegible] [illegible] mutui [illegible]

[illegible] [illegible] hunc contractum honestare titulo venditionis, et emptionis cum pacto revendendi, et

[illegible] redimendi [illegible] et contra [illegible] pactum vendendo ac [illegible] contrahentes [illegible] magno [illegible] tanquam [illegible] tanquam [illegible] usuram, [illegible]

[illegible] ad contractum emptionis et venditionis requiritur, ut qui vendit vere velit vendere, et qui emit vere emere velit [illegible] contra [illegible] ad palliandas usuras. Atqui in contractu qui dicitur ad [illegible] contrahentes [illegible] vere emere volunt, qui dat [illegible] tradit titulo mutui postea restituendi, et qui dat res [illegible] ut pignus tradit mutuatori. Ergo [illegible]

[illegible]

[illegible] contractum [illegible]

[illegible] ipsi [illegible]

[illegible]

[illegible] locationis [illegible] tractu [illegible]

[illegible] contractum [illegible] ut vendat [illegible]

[illegible] per venditionem acquisivit dominium, ad se fructus temporis intermedii [illegible] percipiendo [illegible]

[illegible]

[illegible]

2

Respons: ad hanc quaestionem divisi sunt theologi, juxta plures [illegible] [illegible]

[illegible] [illegible]

[illegible] [illegible]

[illegible] [illegible]

[illegible] [illegible] tamen [illegible] translatum emptori dominii directi jus percipiendi fructus [illegible] [illegible] sibi praestitum solvat. [illegible] in emptorem [illegible] dominium transferre [illegible] non transferre dominium [illegible] sed dominium diminutum, id est sine jure percipiendi fructus hoc tempore [illegible] venditor [illegible] ad retinendus. [illegible] tibi conferre directum meum [illegible] emptori [illegible] dominium directum transferre, et reservare mihi dominium utile, quod in emptorem [illegible] transferendo sibi pretium perdidero.

Haec sententia mihi magis quam prior arridet.

[illegible] [illegible] emptoris et fructus eodem tempore ad eum [illegible] pertineant [illegible] proinde habent venditor [illegible] tempore [illegible]

[illegible]

[illegible] sicut emptor [illegible] periculum rei suscepit [illegible] ex emptione, tamen quia jus habet [illegible] [illegible] sive quoad valorem, sive quoad [illegible] [illegible]

[illegible] aliquid [illegible] ex fructibus deduci ratione [illegible] periculi.

[illegible] habet aliquid [illegible] [illegible] III [illegible] III

[illegible] III [illegible] tempore [illegible] [illegible] fructus non sufficiant [illegible] [illegible] quia tunc primus [illegible]

[illegible] ... uxorem [illegible] ... fructus afferre.

At tamen convenerint, sic principio convenerit [illegible] ... annos [illegible] ... ad finem fructus [illegible] ...

Articulus VI.

De cura mentali

[illegible]

[illegible]

sibi

[illegible]

[illegible] propter [illegible] intendit.

[illegible]

[illegible] habere [illegible] internas [illegible] commentationis, ita etiã licet eandem [illegible]

[illegible] gratitudine [illegible] et in [illegible] posset, [illegible]

[illegible] explicari [illegible] intentio, et [illegible] ratione [illegible]

[illegible] tamen [illegible] ad [illegible] donationem [illegible] sufficit, quando non [illegible]

[illegible] Hec [illegible] in praxi admittenda non [illegible]

[illegible]

[illegible] procedit

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] propter [illegible]

Articulus VII

De obligatione [illegible] [illegible]

ejus heredis, et [illegible]

[illegible]

etc

fere in numero stant ex utraque parte.

Qui negant [illegible]

[illegible] nullo modo potest. Non valet itaque [illegible]

contractus [illegible] ut conditio contractus conditionis in materia [illegible]

[illegible]

Qui vero contendunt [illegible], plures rationes afferre solent, sed ego [illegible]

[illegible] quod non tollit efficaciam intrinsecam [illegible]

[illegible]

Quam non obstat ratio adversariorum [illegible]

[illegible]

[illegible] consistit [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] ex [illegible] [illegible] autem [illegible]

[illegible] restitutio [illegible] semper [illegible] ordinati [illegible]

[illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] habeat [illegible]

[illegible] [illegible] non [illegible] [illegible] vel [illegible] non [illegible]

[illegible]

[illegible]

[illegible] ... illa exegerit ex parte ipsius accessit segestum acceptatio.

[illegible]

[illegible] ... in te... animus humani. Bona tamen fides a restitutione illud excusat, postquam bona fide consumpsit nec inde locupletior evasit.

[illegible] ... qui celebrare solent contractus [illegible] ... retinere alia [illegible]

Resp. eos qui bona fide contractum usurarium fecit [illegible]

[illegible]

[illegible] ... usurarum per restitutionem [illegible]

[illegible]

[illegible]

[illegible] ... non habet ... [illegible]

[illegible] ... aut inde ... [illegible]

[illegible] ... titulis ... interveniunt ... [illegible]

[illegible] ... et contrahere ... [illegible]

[illegible] ... se retinere ... mutantis ... [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] ... ut constat ex capite ... ex [illegible]

[illegible]

[illegible] III [illegible] III. [illegible]

[illegible] nec christianus in peccato suo decesserit, ... sepulturam sed nec orationes [illegible]

 vel christianae traderent sepulturae, et quicumque [illegible]

[illegible]

[illegible] quae de mandis separari oblationes [illegible]

[illegible] et constitutas clericorum qui sepeliuntur in loco sacro sepulti [illegible]

[illegible]

[illegible]

[illegible] testamento vel aliter [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] Haec de jure canonico. [illegible]

[illegible] consuetudine

[illegible] in locis et [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] tenent [illegible] [illegible] [illegible] [illegible] eorum [illegible] [illegible] [illegible] non habeant [illegible] [illegible] sufficiant [illegible] [illegible] [illegible] [illegible] [illegible] non [illegible] [illegible] [illegible] [illegible] debent [illegible] [illegible] hereditatem non [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] legitima et [illegible] [illegible] [illegible].

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] heredes [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] habeant?

[illegible] debent pro rata contribuere restitutioni.

[illegible] [illegible] [illegible] [illegible] [illegible] non [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] non [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ex l. unica [illegible] de heredit. defunctorum [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] actiones [illegible] [illegible] inter heredes pro rata hereditatis [illegible] et ejus onera [illegible] obligationes, ut constat ex l. [illegible] [illegible] hereditaria actione. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] non [illegible] [illegible] [illegible] [illegible] [illegible] onera [illegible] [illegible] [illegible] debent [illegible] non [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] non [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] creditor personales [illegible] [illegible] [illegible] [illegible] [illegible] pro [illegible] [illegible] [illegible] [illegible] [illegible] restituere tenentur.

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] Alexandri III [illegible] creditor [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ante.

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] obligationes [illegible] [illegible] [illegible] [illegible] [illegible] differentia [illegible] [illegible] [illegible] [illegible] persona [illegible] [illegible] [illegible] [illegible] [illegible]

tiae: quilibet autem heres est pars illius personae, et consequenter [illegible] testatoris obligationem subit.

[illegible] contractus [illegible] nec ad restitutionem tenentur, citra quando cooperationem [illegible] mutuatarii [illegible] mutuatarii [illegible] usuram [illegible] mutuatorio [illegible] ipse [illegible] restitutionem [illegible] ad [illegible] restitutionem [illegible] non [illegible] contra justitiam [illegible] mutuatario [illegible] involuntarium. Usurarius [illegible] mutuatarius [illegible] in hoc [illegible] conveniunt, sed non conveniunt [illegible] contractu [illegible] ad [illegible] cooperationem [illegible]

[illegible] in hoc proposito confirmant [illegible] mutuatarius [illegible] mutuatario [illegible] quia [illegible] media necessaria [illegible] aut utile existimat, quia sine usuris mutuum non obtineret.

[illegible] conveniunt [illegible] restitutionis absolvi [illegible] questionis [illegible]

[illegible] contractus [illegible] contractus [illegible]

restitutionis. Si vero [illegible] mutuatario [illegible] graviter peccet, et [illegible], tamen tenetur [illegible],

ut docet [illegible]. Sed [illegible] usurarii [illegible] [illegible]

rario usurarios contractus inerunt [illegible] scienter mutuatarius [illegible]

runt eos, qui pecunia indigent [illegible] ad usurarios [illegible] sit [illegible] alter [illegible]

postea exigat usuras promissas [illegible] actiones [illegible] mutuatarii [illegible]

tante et gratis [illegible] mutuatario [illegible]

[illegible] beneficium potius, quam injuria [illegible]

[illegible] contra justitiam et ad restitutionem [illegible]

[illegible]

[illegible]

[illegible]

[illegible] actionis [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

2 712 [illegible] habet [illegible] — [illegible] adminiculum [illegible] licet tamen ab eo, qui [illegible] propter [illegible] subventio sua recepta [illegible] — [illegible] — [illegible] accipiendi [illegible] peccandi ex malitia cordis sui [illegible] scandalum [illegible] non [illegible] scandalum [illegible] debet alius a mutuo petendo desistere [illegible] non [illegible] —

Ex hac Angelica doctrina, quam adoptant Theologi [illegible] non licere petere mutuum usurarium [illegible] tunc [illegible] ad peccandum, etsi illum peccatum [illegible]

Ideo si quis pecunia indigeat, nec alium inveniat, qui [illegible] mutuum [illegible] qui eo [illegible] ergo [illegible] mutuum [illegible] [illegible] [illegible] [illegible] et mutuum [illegible] [illegible] [illegible]

[illegible] recepimus [illegible] qui mutuum petit ad usuram, nec ex caritate quisque tenetur [illegible] debet [illegible] [illegible] — merca[illegible] [illegible] ut [illegible] bono [illegible] necessitati [illegible]

Articulus III

[illegible] emptione et venditione

[illegible] contractus [illegible] sunt [illegible] contractu [illegible] [illegible] ex eo, quod aliquid [illegible] intervenit, [illegible] propter [illegible] [illegible] sunt, [illegible] aut diminuit [illegible]

Articulus I

Quid sit emptio, et [illegible] emptionem pertineant

[illegible] [illegible] merce [illegible] nicata pro determinato [illegible] autem non [illegible] contractus, [illegible] [illegible] [illegible] una se obligat ad [illegible] merce determinata pro determinato pretio [illegible] [illegible] determinata merce.

Dicit[illegible] mutuo [illegible] quamvis [illegible] contractus [illegible] mutuo tamen [illegible] [illegible] neutra [illegible] [illegible] [illegible] [illegible] convenit [illegible] quamvis non [illegible] [illegible] facenti [illegible] [illegible] in quo [illegible] [illegible] [illegible] sine [illegible] Hec autem [illegible] sine [illegible] [illegible] [illegible] non [illegible] [illegible] a contrahentibus [illegible].

Nomine autem arrhe intelligi [illegible] [illegible] inter autem contrahentes [illegible] non [illegible] a contractu [illegible] [illegible] [illegible] [illegible] [illegible] nomine pro emptione [illegible] non ea pertinet [illegible] faciat, sed ut evidentius probari possit convenisse de [illegible] Alqui si arrhe [illegible] veluti pignus data fuerit [illegible] [illegible] contrahentes [illegible] libero [illegible] [illegible] si volet, [illegible] [illegible] [illegible] in contractu [illegible] [illegible] [illegible].

[illegible] tamen arrha [illegible] ut obliget ad perficiendum contractum [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] institutionum [illegible] emptione et venditione [illegible] [illegible] de fide instrumentorum. [illegible] itaque pendet ab intentione contrahentium [illegible] [illegible] intentione [illegible] [illegible] [illegible] [illegible] [illegible].

Dicitur [illegible] una se obligat ad [illegible] [illegible] merces [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] determinata [illegible] [illegible] [illegible] tamen

pacti

[illegible] ... [illegible] dicitur, et in tal [illegible] emptori [illegible] a[illegible] [illegible] [illegible] ... fructus

[illegible] de conditione et [illegible] ... de [illegible], [illegible] nec emptio [illegible] contrahenda [illegible]

[illegible] tamen si [illegible] constet de mente contrahentium

[illegible] pro determinato pretio [illegible] ... a Principe [illegible] [illegible] publica [illegible] ... [illegible] ... [illegible] [illegible] habuerit a numero [illegible] ... apud [illegible] ... [illegible] S. Augustino [illegible] quia [illegible] in persona [illegible] determinato [illegible] ... voluntate emptoris deter- minandum [illegible] ... non valet [illegible] ... contrahenda emptione. Quando vero pre- [illegible] persona determinandum [illegible] ... emptor [illegible] ... pretio, [illegible] ... [illegible] conditione [illegible] ...

[illegible] ... major [illegible] con- [illegible] ... non [illegible] contractus conditiones [illegible] contrahentium [illegible] vendita [illegible] ... et in [illegible], pertineat Quan- [illegible] ... transferat [illegible] ... [illegible] tamen [illegible] emptor [illegible] ... ad domini- [illegible] ... leges [illegible] de emptione et vendi- [illegible] qui [illegible] emptori tradidit [illegible] domini[illegible].

[illegible] ... dominii [illegible] ... [illegible] ... [illegible] conditione [illegible] ... [illegible] ... transferat, [illegible] ... [illegible] ... [illegible] ... non [illegible] dominii [illegible] ... conditio [illegible] ... de contrahenda emptione.

Sed [illegible] ... [illegible] ...

[illegible]

e emptione et venditione [illegible] venditor [illegible] contractus [illegible]

[illegible] traditio [illegible]

non sit [illegible] ratio [illegible] quia contractus [illegible] sufficiens [illegible] ad transferendum dominium [illegible]

[illegible] non transferat ante traditionem [illegible] impedit [illegible]

[illegible] dominio [illegible] pertineant [illegible] est.

[illegible] requiruntur [illegible] res [illegible] certa et

determinata [illegible]

[illegible] perfecta venditio non [illegible] ante [illegible]

[illegible]

[illegible]

[illegible] centum aureos.

Requiritur [illegible] ut venditio perfecta et absoluta sit, nam si sub conditione fiat, et res pereat ante conditio-

nis eventum [illegible] conditionalis [illegible]

e [illegible] emptione [illegible] perfecta [illegible] venditor [illegible]

[illegible]

proxime [illegible] ubi [illegible] emptor et venditor [illegible]

[illegible] contractus est [illegible]

[illegible] obligatio emptoris et venditoris [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] de contrahenda emptione quod v.g. pro [illegible] perierit nihilominus venditor debet numerum quod [illegible] tali [illegible] perierit, tunc sufficit ut venditor [illegible]

[illegible] de contrahenda emptione [illegible] periculum ad venditorem, posterius ad emptorem pertinet sed etsi [illegible] emptori [illegible] quod vellet habere [illegible] emptori [illegible] periculum [illegible] determinata sunt.

[illegible] absolute et ad determinatum [illegible] numerum [illegible] non conditionem [illegible] absolute [illegible] conditione [illegible] numerus [illegible] venditori perire debet

[illegible] venditorem [illegible] tamen [illegible] ad emptorem [illegible] emptorem [illegible] contractus [illegible]

[illegible] quod si [illegible] mensuratio [illegible] mensuratio [illegible] commodo [illegible] si vero nulla sit terminus [illegible] venditor [illegible] ad mensuram [illegible] non comparente, periculum ipsius emptoris erit

[illegible] conditione [illegible] emptorem attinet: ita et fructus rei venditae ad [illegible] emptorem pertinent. [illegible] si nihil aliud expressum sit, fructus [illegible]

[illegible] Ratio est [illegible] [illegible] ex [illegible] [illegible] etiam [illegible] Sententia [illegible] ante [illegible] [illegible] tamen [illegible]

[illegible]

Si [illegible] et [illegible] non [illegible] [illegible] venditae [illegible] tamen [illegible] emptor [illegible] non [illegible] [illegible] emptionis et [illegible] [illegible] [illegible] et [illegible] tamen [illegible] [illegible] [illegible] [illegible] tamen [illegible] damni emergentis vel lucri cessantis interveniat.

[illegible] emptor [illegible] et [illegible] [illegible] et utilitates rei venditae [illegible] lucri cessantis [illegible] damni emergentis [illegible] emptorem [illegible] de [illegible] emptione et rei [illegible] [illegible] emptor [illegible] non [illegible] [illegible] emptori competunt [illegible] tamen venditori [illegible] [illegible] [illegible] [illegible] [illegible] emptore [illegible] [illegible] [illegible] [illegible] tempore [illegible] non [illegible]

[illegible] difficultas est quando emptor [illegible] promisit pretium [illegible] aut [illegible] tempore [illegible] rei venditae [illegible] non [illegible] pretium habuit [illegible]

[illegible] non [illegible] [illegible] non [illegible] [illegible] [illegible] rei [illegible] ante [illegible] [illegible] [illegible] non [illegible] venditor [illegible] periculo interitus [illegible] pertinente

Si vero venditio absoluta [illegible] partibus [illegible] [illegible] non tamen [illegible] [illegible] promissum [illegible] aut [illegible] [illegible] a venditore [illegible] post traditionem ad venditorem [illegible] [illegible] [illegible] [illegible] [illegible] spectare sive res tradita sit sive non nullo [illegible] [illegible] et nulla fide [illegible] nullo [illegible]

[illegible]

[illegible] ... vero fructus illi adjacent, seu venditori competunt.

[illegible] ... de lucro cessante ... [illegible]

[illegible] ... vendit ... [illegible]

[illegible]

[illegible] ... traditionem ... [illegible] ... condenti.

Articulus II.

Quis possit vendere vel emere.

[illegible]

[illegible]

[illegible]

[illegible] persona [illegible]

[illegible] quantu ad [illegible] emere, vel vendere [illegible] [illegible] et [illegible]

[illegible] commutatio [illegible]

[illegible] commutatio [illegible] Thomas [illegible] 77 art. 4 [illegible] commutatio [illegible]

[illegible] commutatio [illegible]

[illegible] Hinc Distinctione 88 can. [illegible] hoc [illegible]

[illegible] necessarium

[illegible] ut ostendit S. Angelicus loc. cit. his verbis [illegible] commutatio [illegible] necessaria [illegible]

[illegible] hec autem [illegible] negotiatio [illegible]

[illegible] honesti [illegible] tamen [illegible]

non importat aliquid honestum vel necessarium, nihil tamen importat [illegible] rationi, vel virtuti contrarium [illegible]

[illegible] negotiatio [illegible]

[illegible]

[illegible]

Objicies Ecclesiast. [illegible] et [illegible]

[illegible] negotiator [illegible]

[illegible] mendaciis et [illegible]

[illegible] sicut in medio compaginis [illegible]

angustiabitur [illegible] Ratione autem [illegible] ad Timotheum [illegible] 6 Qui volunt [illegible]

12 40 in [illegible] et [illegible] [illegible] homines [illegible]

[illegible] in ante [illegible] mercator in autem [illegible]

[illegible] et [illegible] Christianus decet ee mercator — [illegible]

[illegible] non [illegible] eo pracipit [illegible] placere potest. [illegible]

[illegible]

Deinde [illegible] textus [illegible] de mercatoriis qui [illegible] lucrum tanquam finem. Et quamvis negotiatores [illegible] intendunt [illegible] et [illegible] exercent [illegible], ea plenus hominibus esse [illegible] non sit [illegible] permanendi [illegible] erat. Tamen et inquit [illegible] non cognovi [illegible] mihi [illegible] sed [illegible] mea [illegible] fornicari ista distinctio-[illegible]

negotiari vero aliquando licet [illegible] negotiator [illegible] non [illegible] negotiatores [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] vero [illegible] sit

[illegible]

[illegible]

[illegible]

[illegible] Alexander III ita decrevit — [illegible]

[illegible]

[illegible]

[illegible]

sancite fuerunt [illegible]

[illegible]

[illegible]

[illegible] ut omnia et singula [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] XIIII [illegible]

[illegible]

[illegible]

[illegible] esse nisi [illegible] necessitates [illegible]

[illegible]

[illegible]

[illegible]

[illegible] ut [illegible]

[illegible]

[illegible] congregatione [illegible] apud [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

prout

12 - 612 [illegible] pant [illegible] ... [illegible] ... esse et majori quidē proba-
[illegible] Attamen lectori debent sincero animo non dubito ad vendendum, [illegible]
[illegible] similia, nec currere possunt [illegible]
[illegible]

e [illegible]

[illegible]
[illegible] honestis [illegible]
[illegible]
[illegible]
[illegible] IV [illegible]
[illegible] [illegible] partē.

Duas vero conditiones ad licitū, et laudabile [illegible]
[illegible] artificium [illegible]
[illegible] monachus debet [illegible]
[illegible]
[illegible] officiū [illegible]
[illegible]

Praeterea demum [illegible]
[illegible]
[illegible]
[illegible]
[illegible] nihil aliud [illegible]
[illegible]
ac [illegible] materiā [illegible]

[illegible]

[illegible]
[illegible] et [illegible] non [illegible]

[illegible]

Hactenus de iis [illegible] [illegible]

[illegible]

Articulus III

Quid vendi queat, et quomodo vendi debeat seu de re vendibili et de obligationibus venditoris

[illegible]

[illegible]

[illegible]

[illegible] non [illegible] [illegible] [illegible] tamen [illegible]

[illegible]

[illegible]

[illegible] non [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] tamen [illegible]

[illegible] humanae societati perditores, qui aeterna mortem hanc occidunt.

[illegible]

[illegible] non [illegible] tamen [illegible]

[illegible] tamen [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

tis [illegible] ut dicit quarta ex [illegible] compensat sed [illegible] tetur [illegible] quod ille [illegible] non [illegible] vendere contra dictam conscientiam

Quando autem ex rationabili causa venditor aliquid rationabiliter [illegible] et ista causa non [illegible] ex necessitate [illegible] venditor [illegible] gratia et [illegible] hac causa [illegible] causa [illegible] venditionem [illegible] vendere [illegible] tale possunt.

Si vero peccant [illegible] lege civili [illegible] vendunt, tamen [illegible] lex in mere [illegible] talis [illegible] venditor [illegible] et bona [illegible] tali [illegible] occasione peccato vendentium [illegible]

Super venditione rei [illegible] habemus [illegible] S. Thomam Angelicum doctorem in quaest. 77 art. 2 [illegible] circa quae venditor [illegible] secundum speciem [illegible] quantitate [illegible] argentum [illegible] speciem [illegible] quantitatem [illegible] et ideo si quis scienter utitur deficienti mensura in vendendo [illegible] Unde dicitur Deuteronomium: non habebis in sacculo diversa pondera, majus et minus: nec erit in domo tua modius major et minor [illegible] abominatur enim Dominus eum qui facit haec, et aversatur omnem injustitiam [illegible] fuerit [illegible] venditione [illegible] fuerit venditor [illegible] juramento [illegible] compensare [illegible] intelligendum [illegible] quantitate [illegible] quantitatem [illegible] quantitatis.

D [illegible] manifesta [illegible] quaest. 77 art. [illegible]

venditor autem, cum vendens exponit, et hoc ipso dat emptori [illegible] quod res sit [illegible] vel [illegible] [illegible] homini vel [illegible] [illegible] [illegible] [illegible] huiusmodi [illegible] res [illegible] vendenda [illegible] commutandi [illegible] [illegible] [illegible] unde [illegible] [illegible] [illegible] [illegible] et [illegible] non [illegible] venditor, potest tamen [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] subtrahat [illegible] oportet [illegible] [illegible] non tenetur ad manifestandum [illegible] [illegible] [illegible] [illegible] propter huiusmodi [illegible] venditor [illegible] subtrahi de [illegible] quod est subtrahendum. Unde potest licite [illegible] indemnitati suae consulere [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] debet [illegible] manifestari et si non manifestet [illegible] [illegible] [illegible] venditor [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] tamen si [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ubi [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] contractus, et [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] quod [illegible] [illegible] [illegible] qualitas in contractu [illegible] [illegible] [illegible] ad [illegible] eo, quod vendendum proposuit.

[illegible] [illegible] substantialem [illegible] [illegible] mixtio [illegible] [illegible] [illegible] speciei, quia inquit Angelicus, quod [illegible] communiter vendi pretio taxato solent [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] et ad restituendum tenetur, qui vendit vinum aqua mixtum, vel [illegible] frumenti mixtum hordeaceam, si mixtio reddat rem deteriorem [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] et non [illegible] [illegible] et [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

Quando vero per admixtionem res non redditur deterior sed vero [illegible] vel melior [illegible] [illegible] [illegible]

[illegible]

adequalitatem ... [illegible] ... S. Antonino ... [illegible]

... [illegible] ... pretio ... [illegible] ...

... [illegible] ... emptori ... [illegible] ...

... emptor ... [illegible] ...

mixtionis minus ... [illegible]

Sed ... [illegible] ... Ratio est quia

vendi... [illegible] ... humanos ... [illegible] ...

... [illegible] ... restringendum ... [illegible] ... emptori ... [illegible]

... [illegible] ... aqua ... [illegible] ...

... [illegible] ... aqua ... [illegible] ...

... [illegible] ... emptor ... [illegible] ...

... [illegible] ... quando ... [illegible] ... materia ... [illegible]

... [illegible] ... non ... aquae ... [illegible]

... [illegible] ... vino ... [illegible] ... amphoras aquae

vendit ... [illegible] ... ad ...

... [illegible] ... contractus ... [illegible] ... ad finem

quod emptor ... [illegible] ... Pharmacopola ... [illegible] ... medicamento ... [illegible]

... [illegible] ...

... [illegible] ... emptor ... [illegible]

pretio ... [illegible] ... restituendum ... [illegible]

... [illegible] Quando defectus est in quantitate idest in pondere, numero, vel mensura, tenetur venditor

... [illegible]

... aequalitas inter rem, et pretium

... [illegible]

... [illegible]

... [illegible]

... [illegible]

[illegible] non aequant [illegible] mensuram [illegible] in [illegible] aliis decem libris [illegible] majori [illegible]

[illegible] mercatores [illegible] quaerit sit [illegible] in uno, [illegible] satis [illegible] [illegible] non [illegible] licet [illegible] semper injustus et qui [illegible] aut [illegible] [illegible] emptor decipi.

[illegible] aut [illegible] ad effectus [illegible] venditor [illegible] emptori [illegible] ad restitutionem [illegible] emptori [illegible] auctoritate juris [illegible] et tamen [illegible] contractus non sufficit [illegible] in pretio pro ratione [illegible] contractus [illegible] deceptus [illegible] ratione [illegible] emptori [illegible] provideat.

[illegible] mercatores [illegible] collocant [illegible] emptor decipi [illegible] emptori [illegible] emptor [illegible] voluntas [illegible] non licet [illegible]

[illegible] tamen [illegible] emptor [illegible] tamen [illegible] vere

[illegible] admonere emptorem, ut [illegible] illud [illegible] commodat.

At vero si [illegible] merces venales, [illegible] ad tale [illegible] ut [illegible] [illegible] [illegible] aut [illegible] [illegible] [illegible] sufficit [illegible] ille [illegible] causa contrahendi, quod emptor [illegible] celebraret cognito illo defectu.

Qui merces suas propter [illegible] vendit [illegible] preti et sine emptoris praejudicio, [illegible] frequenter [illegible] [illegible], ut [illegible] deceptionis [illegible] [illegible] [illegible] caeteri mercatores [illegible] merces [illegible] [illegible] [illegible] [illegible] in pretio [illegible] [illegible] [illegible] emptores [illegible] merces [illegible] [illegible] mercatores [illegible] [illegible] emptores [illegible].

[illegible] emptori [illegible] [illegible] emptorem [illegible] ex ignorantia [illegible]. Si vero emptor [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] non [illegible] [illegible] [illegible] [illegible] vendere [illegible] [illegible] [illegible] habeat [illegible] [illegible] [illegible] tamen pro ratione [illegible] [illegible].

Regula [illegible] [illegible] [illegible] [illegible] [illegible] emptor [illegible] habet jus cognoscendi rem, quam vult emere, et [illegible].

[illegible] [illegible] [illegible] [illegible] [illegible] non [illegible] [illegible] [illegible] [illegible] [illegible] communiter non [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible].

Regula [illegible] si [illegible] res [illegible] emptori nocivas, nec periculosas nec [illegible] [illegible] [illegible] [illegible]
nabili

[illegible] emptor [illegible] non [illegible] venditor non tenetur [illegible] modo [illegible] emptore non interrogante [illegible] merces [illegible] merces [illegible] semper [illegible] manifestatum [illegible] emptor [illegible] tunc [illegible]

Si tamen venditor [illegible] videt [illegible] cavere debet ex sua parte, ne quid inde aliquod damnum patiatur.

Regula [illegible] manifesta [illegible] non [illegible] si emptor [illegible] venditorem non interrogat [illegible] venditorem qui non tenetur [illegible] emptore [illegible] non interroget [illegible] venditor [illegible] emptore non [illegible] vitium [illegible] tunc [illegible] debet [illegible] vitium quod [illegible] manifestum tamen respectu [illegible]

[illegible] venditor [illegible] non [illegible] teneri aperire vitium manifestum si [illegible] emptore [illegible] si venditor [illegible] emptore [illegible] non [illegible] quam emat intentioni [illegible] emptore [illegible] vendi [illegible] non [illegible] alienis.

Inquiritur itaque [illegible] an valida sit rei alienae venditio.

[illegible] translationem dominii rei venditae in emptorem [illegible] translationem dominii [illegible] in venditorem [illegible] ratio [illegible] illud dominium transferre [illegible] non habet [illegible] emptore [illegible] dominium [illegible] venditore transfer[illegible] transfert [illegible] emptione [illegible] emptori [illegible] potest [illegible] talis venditio non valeat quantum ad transferendum dominium [illegible] superest ut [illegible] quoniam [illegible]

transf[illegible]

translationem pecuniae [illegible] [illegible] [illegible] venditor et suis et haeredibus [illegible] [illegible] – [illegible] [illegible] qui [illegible] [illegible] [illegible] stipulationem [illegible] alienae, venditor [illegible] pretio sibi comparat bona [illegible] [illegible] [illegible] actione et expresse [illegible] [illegible] [illegible] [illegible] dominium, quod venditor [illegible] alienae [illegible] pecunia acquisivit, [illegible] [illegible] [illegible] [illegible] obligatus manet ut [illegible] [illegible] [illegible] vel [illegible] [illegible] [illegible], et dominus [illegible] [illegible] comparet.

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] nomine [illegible] [illegible] dominii [illegible] [illegible] habet [illegible] et [illegible] [illegible] [illegible] et in [illegible] de rei vendicatione ubi [illegible], qui pecunia apud se deposita [illegible] [illegible] [illegible] dominium [illegible] [illegible] [illegible] [illegible], quando [illegible] [illegible] pecuniis pupillorum, militum, ecclesiarum et minorum, tunc emptores praefata bona non sibi, sed ecclesiis, militibus, minoribus, aut pupillis acquirunt, ut communiter ex [illegible] [illegible] colligunt.

Inquires [illegible], quid [illegible] de eo, qui [illegible] [illegible] nomine vendit [illegible] [illegible] [illegible] [illegible] pretio.

[illegible] [illegible] [illegible] [illegible] de mandato [illegible] [illegible] [illegible] [illegible]. [illegible] si [illegible] [illegible] supra pretium justum vendit, [illegible] restituere emptori, non domino debet [illegible] [illegible] [illegible] [illegible] [illegible] tantum vel tanti vendat et si plus invenerit, [illegible] retineat [illegible] augmentum [illegible] [illegible] [illegible] [illegible] conventio [illegible] [illegible] [illegible] [illegible] famulus [illegible] [illegible] [illegible] amicus, vel opera [illegible] [illegible] fore [illegible] [illegible] [illegible] [illegible] domini venditione [illegible] pretio committat non [illegible], nec promisso ullo suae industriae, et [illegible] stipendio [illegible] [illegible] [illegible] [illegible] in stipendio [illegible] [illegible] [illegible] [illegible] pretium [illegible] [illegible] [illegible] [illegible] et diligentia [illegible]. [illegible] tamen procedentem, [illegible] [illegible] [illegible] [illegible] [illegible] ex [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], [illegible] [illegible] [illegible] [illegible] pretio [illegible]. [illegible] industria sua [illegible] [illegible] [illegible]. [illegible] majori pretio vendiderit, [illegible] incrementum, prout [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] majori pretio vendendi [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] nec domino [illegible] nec [illegible] [illegible]. [illegible] ut [illegible] vendere in uno loco in [illegible] pretium a domino [illegible] [illegible] non invenit [illegible] [illegible] in [illegible] [illegible] valde [illegible] ubi multo majus pretium [illegible] [illegible] [illegible] [illegible] tunc [illegible] non agit [illegible] mercedem labori suo proportionatam retineat. [illegible] [illegible] diligentia non invenit nisi illud pretium, quod [illegible] voluit [illegible] [illegible] pretio [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] vendidit pretio justo paullo majore [illegible] [illegible] retinere valet. [illegible] [illegible] [illegible] [illegible] [illegible] egit [illegible] satis diligentiae [illegible] [illegible] [illegible] [illegible] plus offerre paratum [illegible]

292 sibi empto, et periculo rei in se suscepto, jam non dño, sed suo nomine vendidit.

[illegible] [illegible] proportione [illegible] [illegible] [illegible], ut [illegible] tibi emat tali pretio, et non majori [illegible] quod [illegible] sibi retinere nequit [illegible] [illegible] non [illegible] laboris quem pro eo stipendium accepit seu particulariter [illegible] seu generaliter [illegible] famulus. non [illegible] negotiis [illegible] nulla mercede [illegible] [illegible] quia tunc [illegible] [illegible] [illegible] [illegible] et [illegible] incrementum [illegible] [illegible] [illegible] [illegible] pretium [illegible] [illegible] [illegible] [illegible] ne plus [illegible]. Hinc sartores [illegible] retinere [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] mercatore [illegible] [illegible] [illegible] compensat [illegible] [illegible] [illegible] vestis conficiendæ [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] vendita et [illegible] alienata, [illegible] [illegible] [illegible] [illegible]

Resp. [illegible] [illegible] difficultatem [illegible] [illegible] [illegible]. [illegible] quod [illegible] [illegible] traditio [illegible] [illegible] [illegible] nulla [illegible] [illegible] ad [illegible] [illegible] qui prior in [illegible] [illegible] et a [illegible] emptore aut [illegible] [illegible] aut [illegible] [illegible] emptori pecuniam [illegible] [illegible] [illegible] [illegible] [illegible] emptoris [illegible]. [illegible] [illegible] [illegible] [illegible] jure communi [illegible] [illegible] [illegible] [illegible] [illegible] quia non [illegible] [illegible] [illegible] [illegible] prioris emptoris [illegible] [illegible] [illegible] cum tradita [illegible] [illegible] prior [illegible] [illegible] emptor [illegible] [illegible] [illegible] [illegible] de rei vindicatione [illegible] [illegible] traditione [illegible] [illegible] [illegible] [illegible] traditione [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] tradita [illegible] [illegible] prior [illegible] [illegible] habet jus et [illegible] [illegible] actionem contra [illegible] [illegible] [illegible] [illegible] [illegible] contractu [illegible] sibi [illegible] vel [illegible] sibi [illegible] [illegible] juxta [illegible] qui [illegible] de hæreditate [illegible] [illegible]

[illegible] de [illegible] [illegible] [illegible] de [illegible] contractibus, de permutatione donatione [illegible] et locatione [illegible] [illegible] [illegible] [illegible] locata et tradita [illegible] [illegible] [illegible], ut constat ex [illegible] in [illegible] [illegible] titulo locati [illegible] quia licet conductor non acquirat dominium [illegible] [illegible] jus [illegible] [illegible] [illegible] expelli non [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] tradita [illegible] a priori [illegible] [illegible] [illegible] aut [illegible] aut [illegible] ut [illegible] [illegible] aut [illegible] [illegible] sine traditione translatum [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] prior [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] prior emptor acquirit jus [illegible] in re et [illegible] [illegible] [illegible] [illegible] traditio facta sit, [illegible] [illegible] [illegible] [illegible] [illegible] in [illegible] [illegible] [illegible] [illegible] [illegible] prior [illegible] [illegible] prior [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] tradita fuit, [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] prior emptor ab [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible]

[illegible], licet intra annum a die [illegible] numerandum ex lege [illegible] quae in fraudem creditorum donata sunt [illegible] externo [illegible] emptor non [illegible] probabilius tamen [illegible] venant in foro conveniri, [illegible] donatarium [illegible] [illegible] quanti sua interest [illegible] [illegible] ipse satisfaciat [illegible] [illegible] dominum [illegible] emptori [illegible] [illegible] cooperatus e.

Intra annum potest etiam evinci res, quae prius uni vendita postea alteri venditionem ignoranti; et bona fide accipienti tradita [illegible] tamen est quod [illegible] donata fuit, sicuti colligitur ex lege penultima [illegible] his quae in fraudem creditorum. Non tenetur tamen donatarius bona fide [illegible] creditoribus ante quam creditores petant, et nisi intra tempus a lege praescriptum [illegible] intra annum petant. Hanc vero [illegible] in praesumptione fraudis fundari tradunt communiter AA.

Inquires [illegible] [illegible] evictio, an [illegible] emptori teneat venditor de evictione.

Resp. [illegible] evincere [illegible] nihil [illegible] quam [illegible] per sententiam judicis [illegible] ab aliquo [illegible] [illegible] emit aut [illegible] accepit. [illegible] domum acceptam [illegible] [illegible], et postea [illegible] actione [illegible] [illegible] a possessore [illegible] domum emptor extraxit et [illegible], [illegible] non potuisse [illegible] vendere, et se ejus esse dominum aut domum sibi obligatam esse.

[illegible] ergo venditorem ex [illegible] contractus [illegible] teneri de evictione mercis sicuti [illegible] ex [illegible] [illegible] [illegible] et [illegible] de evictione [illegible] [illegible] ex empto actio non ad pretium duntaxat recipiendum, sed ad id quod interest, competit, ut decernit lex [illegible] servus [illegible] venditor non [illegible] pretium [illegible] emptori cogitur, quanti [illegible] res evictionis tempore [illegible] [illegible] insuper [illegible] [illegible] quanti ejus interest rem evictam non esse.

[illegible], in [illegible] [illegible] [illegible] [illegible] obligatio [illegible]

[illegible] postea [illegible] [illegible] donatori [illegible] evictione [illegible] [illegible]

[illegible] obligatio [illegible] donator nihil [illegible] habet quod

[illegible] [illegible] liter [illegible] non [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible]

[illegible] in re donata [illegible] et [illegible] [illegible]

[illegible] ante monuit

[illegible] venditorem [illegible] [illegible] [illegible] [illegible] tradere [illegible] [illegible] non [illegible]

re[illegible]

sti

3° emptor actione de evict. privatur, quando res sibi evicta e per sententiam arbitri in quem sine necessitate convenit ut manifeste liquet ex l. si dictum ff. hoc tit.; nam cum arbiter non [illegible] [illegible] [illegible] emptor tunc censetur voluntarie rem [illegible] [illegible] [illegible] agere [illegible], non [illegible] venditore sententia condemnatoria [illegible] debeat, juxta [illegible] de emptione et venditione et juxta l. si [illegible] ff. de evictionib. tunc [illegible] [illegible] [illegible] [illegible], et contumaciter [illegible] [illegible] propter malam causam [illegible] [illegible] ibi, et non [illegible] [illegible] [illegible] [illegible] privatur tamen beneficio evictionis si [illegible] [illegible] [illegible] [illegible] fuit [illegible] evictionis actio cessat quamvis venditore absente [illegible] non appellavit a sententia, juxta l. de [illegible] tit. hoc tit. [illegible] si emptor [illegible] agnoscat justitiam evincentis [illegible] causam ab appellando abstineat [illegible] nequaquam amittit [illegible] non [illegible] jure [illegible] [illegible] si venditor [illegible] [illegible] sententia [illegible] [illegible], [illegible] emptorem [illegible] appellandi [illegible] causam [illegible], ut [illegible] ex l. [illegible] venditor [illegible] non [illegible], [illegible] emptorem ad [illegible] [illegible], [illegible] sententiam [illegible] [illegible].

[illegible] evictionis obligatio, si emptor non [illegible] se rem alienam [illegible] [illegible] [illegible] [illegible] actione quidem habet ad [illegible] [illegible] [illegible] expresse convenerit ut [illegible] l. [illegible] de evictione. [illegible] perdit beneficium evictionis, quando [illegible] aut praescribere rem potuit, et sua culpa vel negligentia non praescripsit ex ut l. si dictum [illegible] quando sua culpa rei possessionem amisit [illegible] [illegible] [illegible] actor [illegible] et in causa ceciderit, l. si [illegible] hoc tit. [illegible] [illegible] emptor a possessione rei [illegible] [illegible] sit, tamen si venditor de evictione stipulatus fuerit et promiserit emptorem se [illegible] de jure, et de facto, ut habetur in l. ultima de actionib. empti. ea namque promissio obligat [illegible] [illegible] [illegible] [illegible] juste, non per injuriam.

[illegible] hereditatem vel ejus [illegible] vendit et res aliqua singularis [illegible] emptor non tenetur de evictione, l. [illegible] hoc tit. [illegible] tamen [illegible] pro herede [illegible] fuerit evicta l. si [illegible] ff. de hereditate vel actione vendita. [illegible] discriminis [illegible] quod in priore casu [illegible], [illegible], non fuit venditum solum [illegible] fuerit, ex [illegible] [illegible] non erat [illegible] [illegible] [illegible] vendito namque hereditas ipsa [illegible] non [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

In transactione vero [illegible] [illegible] [illegible], transactione [illegible] [illegible], data [illegible] [illegible] [illegible] compensatione [illegible] [illegible] de evicti actio competit, si res ipsa [illegible] [illegible] evincatur. Si autem res non [illegible] quae [illegible] data fuit ut a lite discederet evincatur [illegible] [illegible] auferat, [illegible] [illegible] [illegible], et [illegible] ex l. [illegible] [illegible]

Articulus IV.

De pretio et de obligationibus emptoris

Justum pretium rei venditae, quod etiam [illegible] seu [illegible], quod scilicet rei valorem exaequat, duplex distinguitur: legitimum et naturale. Legitimum seu legale est pretium quod a Principe vel Magistratu determinatum est, et in [illegible] [illegible]. Naturale seu vulgare pretium est quod ex [illegible] ratione [illegible] in natura et omnibus circumstantiis non determinatione legis, sed communi hominum aestimatione constituitur, juxta leg. pretia ff. ad leg. Falcid.

Discrimen inter hoc duorum pretiorum genus est, quod pretium legitimum consistit in indivisibili, et quodlibet incrementum vel decrementum excludit [illegible] [illegible] lege definitum; vulgare vero in indivisibili non consistit, [illegible] latitudinem habet intra limites justitiae, et tres habet gradus, nempe pium, moderatum et rigorosum, vel ut alii loquuntur, infimum, medium et supremum. Ratio disparitatis est quia pretium legale [illegible] [illegible], vel a multis in idem consentientibus; vulgare autem a plurium aestimatione pendet, qui non [illegible] [illegible] sentiunt, [illegible] varia ferunt judicia, ex quo quod alii [illegible] valere [illegible] aestimant [illegible].

Omnes fatentur difficile confinia latitudinis justi pretii assignari posse. Hanc tamen regulam generalem et communem tradere solent theologi: quo res in communi aestimatione habet in pretio, et quo pretiosior res est, eo major est latitudo justi pretii. Sic juxta communem sententiam, si pretium medium sit viginti, infimum erit novendecim circiter, summum vero viginti unum, et sic latitudinem trium habebit. At vero si rei pretium medium sit centum, infimum erit circiter nonaginta quinque, supremum vero centum quinque circiter, et sic ejus latitudo decem gradus excipit. Hanc proportionem [illegible] justi pretii [illegible] judicio [illegible] potius relinquendam videtur [illegible] inter pretia summa et infima, quae [illegible] circumstantiis variis [illegible] et pretii latitudo diversa esse solent pro diversis locis et temporibus, ut pretium quod uno loco aut tempore, juxta communem hominum aestimationem censetur, in alio loco vel tempore injustum, et excedens pretium habeatur.

Objicies. Justitia commutativa consistit in indivisibili, et respicit arithmeticam aequalitatem; tria vero inter se inaequalia cum uno tertio aequalitatem habere non possunt. Ergo duo ex tribus pretiis non habent aequalitatem cum re vendita, ac proinde justa non sunt.

Resp. distinguendo maj. justitia commutativa exigit mathematicam aequalitatem prout

pru

prudenter determinari potest cum non consistat in puncto quasi a natura rei et ab omnibus invariabiliter; justitia commutativa exigit quidem indivisibile, sed hoc indivisibile soli Deo notum est, qui videt quodnam pretium sit justius ceteris, et merci magis equale. justitia pretii desumitur non ex physico valore rei, sive ex illius perfectione intrinseca et substantiali ut observat S. Thomas 2. 2. q. 77. a. 2 ubi hec habet: res non appretiantur secundum dignitatem naturae ipsarum, alioquin unus parvus qui est animal rationale majoris pretii esset quam una margarita que est res inanimata: sed rebus pretia imponuntur, prout homines ad usum suum ea indigent, ea scilicet, que magis minusve hominis utilitati et commodo inserviunt, plures aut minoris valeat. Nec vero ex sola utilitate rei ratio pretii perpendenda est, genus enim medicinae vel aqua res est, et pluris tamen venditur quod ingens sit. frumenti copia. Universaliter enim ratio justi pretii ducenda est ex comparatione pretii ad rem juxta humanum affectum, et aestimatione considerata. Non sufficit autem unius vel alterius hominis affectus, et existimatio, sed requiritur affectus, et existimatio communis. ergo affectus non sit idem in omnibus, ideo alii aliter de justo pretio quaerunt, atque hinc fit, ut qui emat decem, et statim vendat duodecim absque ullo peccato injustitiae, quia pretio infimo emit, et vendit supremo. infimum vero, et supremum juxta verum pretium sunt. His positis sit

Conclusio I.

Quando pretium lege definitum est, vendi merces omnino debent pretio legali, nisi evidenter constet de injustitia taxae.

Prob. justum censeri debet illud pretium quod publica potestas ex officio constituit, ergo non licet legale pretium augere. Prob. antecedens. Superiores melius ceteris possunt omnes considerare circumstantias, ex quibus crescit vel decrescit rerum aestimatio. ergo. Deinde publica potestas ob commune bonum potest de subditorum bonis disponere et providere ne plus accipiant, minusve dent pro re aliqua. et dum adest justa praecipiendi causa, praecepto parendum est. Hoc autem pretium frequentius taxari solet in gratia emptorum, ut venditor non possit ultra illud accipere non autem ut emptor minus dare non valeat dummodo pretium legale infimum attingat

Dixi, nisi evidenter constet de injustitia taxae si enim constet, amentia, odio, vel deceptione ductis superiores in taxando pretio hic nullam obligationem induxit. Quamvis enim magistratui ob bonum reipublicae et ad reprimendam mercatorum avaritiam potestas competat taxandi pretia praesertim in rebus, quibus homines in singulos dies indigent. debet tamen id facere intra limites aequitatis et justitiae

[illegible] ut si de [illegible] et pecunia [illegible] coepi [illegible] tempore sterilitatis [illegible] aequitatem non permittere ut [illegible] ad omnium [illegible] gravamen [illegible] injustum [illegible] Interea tempore sterilitatis [illegible] pretium augere [illegible] i.e. [illegible] majori pretio [illegible] merces, seu [illegible] vili pretio distrahere

Conclusio II

Si nulla lege pretium taxatum sit, venditor non debet justi pretii naturalis latitudinem excedere, emptor vero debet justi pretii quantitatem attingere. Secus omnis emptio, et venditio per se injusta est et venditor aut emptor in foro conscientiae debent contractum ad aequalitatem reducere per restitutionem, nisi liberalis datio, vel remissio saltem praesumpta ab illo fiat, qui damnum patitur. Est communis, et certa doctrina.

Probatur D. Thom. quaest. 77 art. 1. in hunc modum == secundum se emptio, et venditio videtur esse introducta pro communi utilitate utriusque, dum scilicet unus indiget re alterius et e converso... quod autem pro communi utilitate inductum est, non debet esse magis in gravamen unius quam alterius: et ideo debet secundum aequalitatem rei inter eos contractus institui... et ideo si vel pretium excedat quantitatem valoris rei, vel e converso res excedat pretium, tollitur justitiae aequalitas. Et ideo carius vendere, vel vilius emere rem, quam valeat, est secundum se injustum, et illicitum ==. Hinc

Resolves primo, non, quia duplex est pretium, unum carius pro exteris, alterum vilius pro indigenis. Ita unanimiter omnes theologi. Nam in omni contractu aequalitas utrinque jure naturali servanda est ex aequo. Hinc capite 1 de emptione ecclesia ita praescribit: Presbyteri plebes suas admoneant, ut non carius vendant transeuntibus, quam in mercato vendere possint.

Resolves contra justitiam peccare et teneri in conscientia excessum pretii restituere, qui fraude vel mendacio inducit aliquem ad emendum majori pretio, quam emisset, tametsi venditor non excesserit limites justi pretii. v.g. mercator perjurio affirmavit tanti sibi merces valere, ut emptorem ad pretium supremum pertraheret, quod etiam obtinuit: sublato autem perjurio aliter non emisset nisi pretio medio, aut infimo. Mercator debet reddere, quod extorsit perjurio. Nam quisque jus habet ne fraude aut mendacio pertrahatur ad pretium augendum ac damnum sustinendum, et ad amittendum lucrum.

Hinc

huc pertinet S. Pauli doctrina scr. ad Thessalonicenses 1. 4. scitis, quae praecepta dederim vobis; Domini Jesu ... ne quis supergrediatur, neque circumveniat in negotio fratrem suum, quoniam vindex est Dominus de his omnibus. Quamvis igitur licitum sit contrahentibus se in re circumvenire intra latitudinem justi pretii, ita ut venditor emptore valeat carius vendere et emptor vendente minoris emere, non pretio persolvere, id tamen sine ulla omni fraude faciendum est; ut inquit Divus [illegible] l. 3 de off. tollendum est in rebus contrahendis omne mendacium, non licitatorem venditor nec qui contra se licitetur emptor opponet.

Quoniam vero mercatores norunt omnia haec quae negotiatoribus [illegible] [illegible] [illegible] jurant alii qui mercatores qui [illegible], aut se injuriis alterius tanti res constitisse, mendacii aut etiam perjurii non autem injustitiae [illegible] ratione. Verum nemo potest ambigere quin multi emptores hac arte decipiantur et qui cognita veritate solutum pretium non solvissent. Neque audiendi sunt qui dicunt, emptores quasi fidelis hi mendaciis et perjuriis, in eorum praestat illi imputari debere quia in [illegible] facilis est ad credendum. Non debemus enim male de proximo judicare et fides est juramentis adhibenda.

Resolves itaque [illegible] contra [illegible] et [illegible] [illegible], qui postquam aliquid pretio infimo vendidit pretium ejusdem mercis minutione aut [illegible] ad medium reduxit. Quamvis enim [illegible] contrahentes [illegible] ante conventionem pretium augere [illegible] ad [illegible] vel diminuere, [illegible] infimum tamen designato, [illegible] convento [illegible] [illegible] [illegible], [illegible] non est [illegible] tantillum eo [illegible] vendere [illegible] est emptis et vendentis conventione [illegible] [illegible] [illegible] [illegible] ergo tunc operatur contra jus, quod ex conventione jam alteri acquisitum est.

Resolves ito cum communi sententia, non licere pluris vendere mercem quia emptori est valde grata vel utilis, vel etiam necessaria et docet D. Thomas quaest. [illegible] art. [illegible] scribens: si aliquis multum [illegible] ex re aliena quam accepit ille vero qui vendit non damnificatur carendo illa, non debet eam supervendere. quia utilitas quae alteri accrevit non est ex vendente sed ex conditione ementis. Nullus autem debet vendere alteri quod non est suum, licet possit ei vendere damnum quod patitur. Et [illegible] [illegible] [illegible] ex communi [illegible] [illegible] non ex particulari alicujus [illegible] aut necessitate [illegible] debet ergo, qui ob grave, vel domum [illegible] [illegible] [illegible], quia [illegible] emptoris [illegible] peccant contra [illegible] et ad [illegible] [illegible].

Resolves [illegible] cum communi [illegible] [illegible] non [illegible] vendente ultra justum pretium, [illegible] tale pretium emptor offerat, emptor [illegible] non [illegible] liberaliter donare [illegible] [illegible] [illegible] [illegible] quod [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] voluntarium sed ex necessitate [illegible] [illegible] [illegible] [illegible] [illegible] mercis pretium non augenta, ut probavimus. Quod si contraxit ex animo suo liberaliter donandi, tunc retineri [illegible] [illegible] [illegible] ex [illegible] de liberali donatione, [illegible] [illegible]

[illegible] [illegible] sint sequentes si emptor [illegible] in qui [illegible] amicus venditoris et [illegible] liberalis [illegible] benefitus, [illegible]

[illegible] valorem et [illegible] [illegible] [illegible] [illegible] sunt [illegible] [illegible] [illegible] [illegible] contractus [illegible]

[illegible] tamen, ut [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] venditor [illegible] valore [illegible] ex [illegible] [illegible] [illegible] et [illegible]

[illegible] [illegible] emptor [illegible] [illegible] [illegible] [illegible] non [illegible] non [illegible] [illegible] rei [illegible] [illegible]

debere tamen pretium augere [illegible] [illegible] [illegible] quantitas [illegible] [illegible] [illegible] [illegible] [illegible] venditoris [illegible]

[illegible] emptor ipse [illegible] [illegible] [illegible] [illegible] non ignoranti [illegible] et [illegible] emere minori [illegible]

communi [illegible] [illegible] [illegible] venditor [illegible] [illegible] [illegible] [illegible] et [illegible] ignorantiae causa [illegible]

[illegible] [illegible] ignorantia nulla [illegible] [illegible] voluntaria et [illegible] [illegible] [illegible] simplex et ignarus venditor [illegible] [illegible]

[illegible] de [illegible] [illegible] valore rei [illegible] rei [illegible] [illegible] [illegible] [illegible] [illegible] ignorare non [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], ut si forte ibi [illegible]

[illegible] minori pretio [illegible]

[illegible] emptor [illegible] majoris pretii quod venditor ignorat [illegible] [illegible] conscientia, [illegible] [illegible] sine scrupulo [illegible]

emere [illegible] venditor [illegible] an velit [illegible] pretium [illegible] vendere et [illegible] [illegible] [illegible] [illegible] in hoc venditor [illegible]

[illegible] [illegible] [illegible] in eo casu non [illegible] [illegible] [illegible] [illegible] [illegible] non [illegible] [illegible] ex suppositione [illegible]

[illegible] bona fide procedat [illegible] rei valorem [illegible] [illegible] [illegible] [illegible] pretio emere in aliqua provincia [illegible]

[illegible] [illegible] [illegible] [illegible] non [illegible] [illegible] [illegible] non ignorat [illegible] [illegible] [illegible] ignorat [illegible]

[illegible] [illegible] [illegible] vero in uno loco [illegible] pretio [illegible] [illegible] vendere pretio [illegible] [illegible] multo majori in [illegible]

loco [illegible] [illegible] [illegible] [illegible] tamen [illegible] [illegible] [illegible] [illegible] [illegible] tametsi [illegible] sumptus et [illegible] [illegible]

[illegible] [illegible] tametsi carius [illegible] emerit [illegible] [illegible] in loco [illegible] et tametsi magno damno [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] ratio [illegible], quando [illegible] pretio emit et [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] lucrum.

Conclusio III

[illegible] pretium [illegible] majus sit quam valore [illegible] [illegible] non [illegible] pretii [illegible] [illegible] [illegible]

[illegible] ordinarie pretium [illegible] in gratiam emptoris [illegible] [illegible] non [illegible] non [illegible] et [illegible] [illegible]

non [illegible] [illegible] circumstantiae [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] pretium [illegible] in hoc [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] emptore [illegible] [illegible] [illegible] [illegible] [illegible]

taxa

taxatio facta est in suppositione quod merces habeant omnes valorem et non sint deterioris conditionis. quod si merces inferioris conditionis sunt non potest venditor iuxta pretium eas vendere [illegible] pretii debet de[illegible] mercium defectus.

Interdum tamen taxatum pretium iniustum est [illegible], ut videlicet non minuatur [illegible] in venditione censuum, et aliorum iurium, quae homines necessitate coacti penuria vendere solent. tunc vero venditor [illegible] istud pretium legitimum, imo etiam plus absque iniustitia exigere [illegible] non excedat pretium rationis summum.

Conclusio XV.

Si pretii legitimi minimum sit quod infra non licet vendere pretium [illegible]

Item quando Princeps lege aut magistratus decreto statuit ne pretium augeatur, tunc excessus supra pretium legale iudicari debet iniustus ut super omnes emptores et venditores [illegible] et propria utilitate excedant. Quia licet merx absolute plurimi valeat spectato [illegible] et minimo valore tamen [illegible] bonitate [illegible] prout bono communi [illegible] fuerit. ideo pretium a Principe taxatum augere minime licet, et [illegible] restituendum tenentur.

Imo etiamsi lex sub poena prohibeat augere pretium excedere, venditor a quo poena [illegible] excessum pretii remaneret adhuc cum [illegible] obligatione restituendi emptori excessum [illegible]. talis est excessus contra iustitia acceptus est, ideoque illi debet restitui, cui iniuria illata fuit, sicut est quando sententia [illegible] prolata [illegible] error non apparet, in rem iudicatam transit, [illegible] in cuius favorem prolata est [illegible] decretum [illegible] [illegible] taxans pretium mercium quando in eo manifeste non apparet error, est emptori [illegible] pretium solvere compellatur.

[illegible] si [illegible] pretium lege Principis statutum circumstantiae notatae [illegible] mutantur. Si merx pretio maiori [illegible] venditur, [illegible] superiore et non [illegible] non autem [illegible] peiora [illegible] tunc emptor [illegible] pretium [illegible] pretium legale non [illegible] [illegible] quae non [illegible] pretii [illegible] taxatum pretium mutare, [illegible] determinanti pretio spectabatur vendi solebant res in eo genere mediocres non autem optimae [illegible] [illegible] edicto [illegible] habeant [illegible] taxa [illegible] constituta [illegible] non debet [illegible] conditio mercium [illegible] variari.

Unde

[illegible] Unde colliges, licitum esse emere ultra pretium a lege impositum eas merces, quae exquisitiorem bo-
nitatem habent. Sicut enim viliores, et deteriores vendi debent non pretio taxato, sed pretio minore. Ita merces, quae
communes superant in bonitate vendi ultra pretium taxatum licent. Ita taxatio pretii quemadmodum non compre-
hendit merces deteriores, sic nec eximias, includit enim solum eas res, quae communiter sunt ejusdem generis, ejusque qua-
litatis et conditionis, venire ut a lege communiter censetur, [illegible] necesse [illegible] ut omnes perfectionis sit ejusdem, et
ad omnia aliquia inutiles redderetur lex, et innumerae circa mercium quantitatem lites quaestiones moverentur, sed
emptor mercem suam ordinariam meliorem esse contenderet.

Hinc infertur etiam longo post venditorem ex [illegible] fructus separare meliores verbi gratia, [illegible]
[illegible] ut [illegible] taxa servarent, possit cariori pretio vendere fructus autem qui
supersunt si adhuc sint aequales in bonitate communi, qui communiter venderentur pretio taxato, [illegible] eodem pretio vendere
sin vero propter separationem meliorum deficiant a bonitate fructuum communium, minore debent esse pretio et quantum
eorum conditione mercis

Quod vero [illegible] pretio excedente taxam [illegible], quia [illegible] pretium ultra taxam [illegible] non
[illegible] eodem pretio vendere [illegible] qui [illegible] [illegible] tibi [illegible] mutuare [illegible]
[illegible] pecuniae numero solvendi [illegible] [illegible] ut [illegible] exigere [illegible] se indemnem [illegible]
[illegible] quasi [illegible] aequali [illegible] solutione erat, tametsi [illegible] non [illegible]. ita si emisti aliqui-
[illegible] pretium non ideo potes eandem rem alteri [illegible] pretio vendere, ut te serves indemnem, [illegible] incurristi dam-
num [illegible] excessum pretii, non ex eo quod iterum vendas, incurris aliud damnum praeter privationem tritici, quod ta-
xato pretio compensari debet. Quando vero emisti [illegible] taxam, [illegible] eo pretio vendere [illegible], quia propter ex-
[illegible] in [illegible] lex [illegible] emi excessum potes excessum [illegible] et [illegible]
[illegible] tamen [illegible] tibi [illegible], et [illegible] laborem [illegible] pretio compensasti, [illegible]

Conclusio V.

Non pro arbitrio vendentis, sed [illegible] hominum [illegible] quae non habent
pretium [illegible] determinatum nec [illegible] [illegible], aves [illegible],
et [illegible] et [illegible], et aliae id genus merces, quae ad [illegible], et [illegible] humanum [illegible] sunt
[illegible] plures et ingenii nominis contra plures celebres [illegible]

In aestimatione rei non ex [illegible] contrahentium affectu [illegible], quorum alter ex avaritia alter [illegible]

quasi

quando initum et expediri [illegible] sed pretium justum, quo res quælibet vendi debet, [illegible] ex judicio æstimatione prudentum, qui in ejusmodi rerum intelligentes sunt, spectata novitate antiquitate raritate et aliis circumstantiis ad valorem rei facientibus, ut communiter fieri solet [illegible] res, quæ certum pretium non habent. si ergo alii omnes præter emptorem non modo pretium illud non [illegible], sed etiam judicent imprudenter a quolibet offerri, tanti comparari habeant omnes, quo pretium augere possit, signum est quod res ista in omni æstimatione tali pretio digna non sit. Sicut est æstimatio communi pretium auget, sic æstimatio contraria [illegible] pretium [illegible]. facit ut pretium illud non sit justum, cum excedat prudentem æstimationem, quæ est [illegible] valoris [illegible] regula. Deinde si res tanti valet quanti venditor eam vendere, videtur res esse infiniti valoris [illegible] et plus esset sine termino pro re ista [illegible]. Atqui hoc est absurdum, et omnes [illegible] tandem devenien-dum est ad aliquem terminum, ultra quem procedere non solum homini imprudentis, sed etiam insania sit.

Objicies juxta leg. 1. ff. ad senatusconsultum Trebellianum, tantum valet res quanti vendi potest. Hoc autem jurisconsultorum axioma [illegible] requirit, nisi in iis rebus, de quibus in præsentia disputamus. Præterea cum hujusmodi merces necessariæ non sint humanæ vitæ, qui vult eas emere excedenti pretio libere [illegible] suum [illegible] [illegible], et [illegible] condonare censetur, cum nulla ex vi, aut necessitate inferatur. tandem quia ejusmodi rerum spectandum est judicium prudentum, injuste eum exigere ab [illegible] pro vitro, cum imprudenter tanti eum æstimet.

Res in ista lege nomine eam valoris [illegible] varietatem probat, quæ intra [illegible] latitudinem pretii contingit, eam [illegible] aliis legibus [illegible]. Ad 2um ergo emptores non donare [illegible] pretium excedere: ergo [illegible] condonare dicitur, et censetur, nisi id signis evidentibus constet. Dat [illegible], quamvis sciat rem non tanti valere, et nemo cogat eum emere, quia rem istam desiderat et mavult facere jacturam illius [illegible] quam re ista carere, [illegible], [illegible] tam magno pretio vendi rare [illegible] tam magni æstimat, quia communis [illegible] æstimatio [illegible] justum pretium constituit. Quare nostro [illegible] si res ista peregrina, et rara [illegible] [illegible] admiratione, ideo illo pretio digna res esset.

Nunc exponendi sunt casus aliqui in quibus [illegible] supra justum pretium [illegible] causas [illegible] assignant et quas licet mihi [illegible] accuratius [illegible], et quas mihi [illegible], et [illegible] res quæ aliquem [illegible] causæ [illegible]. Nunquam est licitum rem pluris emere quam valeat, cum alias non servaretur æqualitas inter mercem, et pretium verum, cum pretii [illegible] externis circumstantiis quæ supra [illegible]. circumstantiæ illæ [illegible], utrum hæc [illegible] pluris aut minoris valeat omnibus inspectis, et perpensis.

[illegible] causa augendi pretii [illegible] vel [illegible], et penuria mercium, tunc [illegible] [illegible]

 estimati [illegible] augent et respectivi, vel minorem [illegible] eas inveniant

[illegible] ex [illegible] causant, vel damnum emergens ubi in pretio attenuus contra eas merces quas in [illegible] tempus servare decreverat, quo [illegible], [illegible] erat. art. [illegible] merces quas [illegible] care emere [illegible] [illegible] [illegible] [illegible] prece ratione pretii [illegible] compensatio [illegible] lucri [illegible], et damni quod ex rei alienati-one [illegible] contingeret. [illegible] S. Thomas quaest. [illegible] art. [illegible] [illegible] = [illegible] emptionem et venditionem [illegible] quod [illegible] in utilitate unius et detrimentum alterius [illegible] quia [illegible] multum indiget habere rem aliquam et alter laeditur [illegible] careat et [illegible] pretio [illegible], et non solum respectu ad rem, quae venditur, sed ad damnum, quod venditor ex venditione incurrit, et sic licite poterit aliquid vendi plus quam valeat secundum se quamvis non vendatur plus quam valeat habenti =. [illegible] hoc [illegible] pretio est a [illegible] [illegible] pretium definit spectata merce secundum se, et pretium in [illegible] [illegible] [illegible] autem lucrum cessans, vel damnum emergens computari debeat, et [illegible] ad justitiam hujus [illegible] requirentur [illegible] [illegible] [illegible] [illegible] quando vero in gratiam solius emptoris res venditur, [illegible] non venditurus solus [illegible] non [illegible] venditio [illegible] et [illegible]

Ad eandem [illegible] affectus [illegible] quo venditor [illegible] merce vendenda [illegible] [illegible] augendi pretii [illegible] [illegible] venditor non [illegible] res sua, sed etiam commodo et oblectatione mercis amatae [illegible] [illegible] se privat et vero affectus [illegible] augendi pretii [illegible] debet esse rationabilis [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] enormi [illegible] et prudentum [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] valde antiqua, [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] non venditurus

[illegible] modus vendendi, quo res [illegible] [illegible] [illegible] [illegible] tunc est propter impensa [illegible] [illegible] merce [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] vero [illegible] vendi [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] solutione [illegible] [illegible] re [illegible] [illegible] in dilata solutione [illegible] [illegible] [illegible] III [illegible] [illegible] = [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] merces suas majori pretio [illegible] [illegible] [illegible] solutionem prolixioris temporis [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ex his casibus [illegible] [illegible] [illegible] [illegible] [illegible], in quo dicitur mutuum date nihil inde sperantes [illegible] [illegible] [illegible] [illegible] solutione [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] = [illegible] [illegible] [illegible] [illegible] pretii [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] pretio infimo, seu credito vendere pretio summo, quia utrumque pretium justum est.

Hac

Hactenus de causis ob quas rerum venalium pretia augentur; videtur nunc de causis ob quas licet res minoris emere quaedam videre. Ac primo quidem res minoris aestimatur, quod merces [illegible] ac proinde res minus valent ob emptorum et pecuniae raritatem. [illegible] magna mercium copia minoris [illegible] cuius copia major est. Praeterea quando [illegible] magna copia mercium emitur, [illegible] minoris emere [illegible] venditoribus qui [illegible] [illegible] conservare, quod [illegible] merces pretio ordinario minutatim et per partes vendidisset.

Secundo res minoris quam antea valeat tunc emi potest, cum in [illegible] [illegible] [illegible] tunc est res emptori [illegible] utilis et [illegible] non est. Ita quando [illegible] rogant ut merces emant, aut eas per vicos mittunt vendendas, minuunt pretium, et [illegible] emi [illegible] [illegible] merces ultroneas viles esse. [illegible] tamen [illegible] et arte [illegible] non raro [illegible] [illegible] et res [illegible] [illegible] [illegible] [illegible] propterea [illegible] [illegible] praetextu quod offerunt. Deinde neque personalis utilitas aut necessitas emptoris nunquam est legitima ratio augendi pretium, ita personalis necessitas vendendi valorem rei [illegible] [illegible] non minuit. [illegible] [illegible] hanc propositionem merito damnavit = Licet alicui emere rem minoris ab eo qui vendit ne [illegible] [illegible], [illegible] eo modo vendendi minuit =.

Sunt circumstantiae ob quas rerum pretia decrescunt [illegible] tunc [illegible] [illegible] sub hasta, seu ut vulgo dicitur [illegible] incanto [illegible] communis [illegible] sententia est merces, quae in licitationibus praeconis voce venales exponuntur, cum nullum pretium determinatum habeant, posse vendi et emi quocumque pretio [illegible] quo inter partes conventum fuerit. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], [illegible] [illegible] [illegible] et [illegible] [illegible] quod in publica emptione [illegible] [illegible] [illegible] examine approbatum fuerit, et merces tunc [illegible] [illegible] [illegible] pretio subjiciuntur, ita ut juste valeant minoris emi propter [illegible] [illegible] oblationis, propter emptorum paucitatem ac [illegible] et [illegible] quaerant propter offerentium multitudinem, et [illegible] [illegible] [illegible] alterum superare [illegible] [illegible] seu certamine incrementum aut decrementum [illegible] [illegible] [illegible] et [illegible] [illegible] [illegible] [illegible] [illegible], [illegible] pretii [illegible].

[illegible] tamen ut [illegible] [illegible] [illegible] [illegible] quae multis modis in hac ratione [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] venditor [illegible] [illegible] [illegible] cedat. Secundo [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], ut [illegible] [illegible] emptores ad augendum pretium [illegible]. Tertio [illegible] aut [illegible] [illegible] merces [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

pri

1300 [illegible] fuerint aut si idcirco aliis sufficiant ex imperiis ad augendum pretii ... [illegible] ... si emptores [illegible] ... [illegible] ... aut [illegible] ... Sed [illegible] ... [illegible] ... ut ipse minimo aut mediocri [illegible] emere cogat.

Cum pro certo scit intra breve dies merces [illegible] supervenientes, unde earum pretium notabiliter diminuendum esse, vendere pretio currenti nunc merces suas?

S. Thomas, cui Theologi [illegible] subscribunt, perspicue affirmantem sententiam tradit, quod est ... his verbis ═ in casu premisso in futurum ... [illegible] ... supervenientium negotiatorum, qui ab emptoribus ignorantur, ... venditor, qui vendit rem secundum pretium, quod invenit, non videtur contra iustitiam facere si id quod futurum est non exponat; si tamen exponeret ... de pretio subtraheret, abundantioris esset virtutis, quamvis ad hoc non videatur teneri ex iustitiae debito ═. Ratio autem ... insinuata haec est, quia pretia vendi... [illegible] ... ita ... [illegible] ... pretii non praescribunt, ita privatorum notitia hos limites non mutant ... [illegible] ... [illegible] ... mutationes et publica perturbatione commercii. [illegible] ... circumstantiae ... communiter ignoretur, adhuc ... valor antiquus, vel communis aestimatione, seu lege taxatus ... [illegible] ... mercator certo sciens brevi tempore ... merces suas carius hic et nunc vendere nequit, [illegible] ... brevi pretium ... [illegible] ... non teneri.

Obiicies: iustus valor rerum desumitur ex prudenti hominum aestimatione, spectatis omnibus circumstantiis praesentibus, praeteritis et futuris. Atqui quod merces tanti vendantur in casu proposito non ex prudenti ... provenit, sed ex errore futurae circumstantiae. Ergo pretium, quod nunc obtinet, iustum reputari nequaquam debet. [illegible] ... [illegible] ... et semper debet pretium ... [illegible] ... ergo ... [illegible] ... aut in pretio descendere, quia ... [illegible] ... [illegible] ... futu-ra pretii diminutione non ex ... [illegible] ... si ... venditor ... brevi ... aut ... brevi ... [illegible] ... exponere, aut aliud in pretio descendere.

Ad primum [illegible] [illegible] [illegible] [illegible] communi [illegible] [illegible] [illegible] [illegible] vendi in [illegible] sive in veritate hujusmodi non fundatam [illegible] [illegible] autem [illegible] nostro [illegible] [illegible] cum accidentia extrinseca, nec intrinseca aut intrinsecam [illegible] [illegible] [illegible] [illegible] [illegible] aestimationem [illegible] [illegible] dominus frumentum non vendere [illegible] [illegible] [illegible] [illegible] tamen [illegible] [illegible] pretio [illegible] [illegible] aestimatione tanto [illegible] et communis [illegible] [illegible] [illegible] [illegible] [illegible] secundum omnes circumstantias [illegible] communiter [illegible] [illegible] [illegible] [illegible] [illegible] merces [illegible] [illegible] aestimant [illegible] secundum omnes circumstantias [illegible] communiter cognosci possunt. Ergo [illegible] [illegible] judicium.

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] quia [illegible] [illegible] ex super [illegible] [illegible] [illegible] [illegible] [illegible] praesens, sed futurum et [illegible] [illegible] [illegible] [illegible] justo [illegible] non [illegible] nec [illegible] [illegible] [illegible] non [illegible] [illegible] [illegible] pretii [illegible] [illegible] communis. Deinde [illegible] [illegible] [illegible] [illegible] aut [illegible] [illegible] rei ipsi extrinseca [illegible] [illegible] aut [illegible] [illegible] non [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], aut ad corruptionem [illegible] [illegible] [illegible] intrinseca [illegible] [illegible] [illegible] intrinsecum [illegible] [illegible] ac mutationem proxime futuram [illegible] [illegible] [illegible] [illegible] nec [illegible] [illegible] merces justo pretio [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] pretii [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], et bona fide [illegible] postea [illegible] [illegible] [illegible] [illegible] ad restituendum [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

Resolves [illegible] [illegible] [illegible] [illegible] pretio vendere [illegible] [illegible] [illegible] [illegible] bona [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] currente pro [illegible] anno [illegible] [illegible] conductorem [illegible] tempore in [illegible] [illegible] [illegible] [illegible] pretium locationis [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] locatores et conductores [illegible] postea pretium minuere vel augere. [illegible] [illegible] venditorem non peccare contra justitiam [illegible] intelligerent [illegible] [illegible] merces animo conservandi [illegible] [illegible] postea vendendi [illegible] [illegible] jure suo, [illegible] [illegible] pretio currenti, quod [illegible] [illegible] [illegible] [illegible] pretium [illegible] [illegible] [illegible] [illegible] minuendum [illegible] totum frumentum [illegible] vendere pretio currenti.

[illegible] [illegible], et alii [illegible] [illegible] [illegible] promulgandae [illegible] [illegible] [illegible] [illegible] minuendus, aut ejusdem [illegible] interdicendus [illegible] [illegible] [illegible] ante [illegible] aut [illegible] [illegible] [illegible] [illegible] deterioris conditionis esse debet, quam alii [illegible] [illegible] aut [illegible] [illegible] [illegible] [illegible] privata [illegible] [illegible] in suum commodum [illegible] [illegible] alios [illegible] [illegible] ut sibi male consulat alioquin [illegible] [illegible] in suum commodum [illegible] [illegible] [illegible] [illegible] [illegible] merces, vel pecunias, quas alioquin [illegible]

tum

tenus erat nunc distrahere sed expectare pretii incrementum aut decrementum deberet, quod neque Molina et [illegible] ex opposito opinionis assertores admittunt, tenentur [illegible] ministri [illegible] magistratuum peccare contra justitiam et ad restituendum teneri si edicta justi promulgationem differant ex industria vel promulgationem bene [illegible] sed [illegible] et amicis prae ceteris revelent ut privatim merces suas vendant vel emant aut [illegible] distrahant. Illa publici ministri tunc abutuntur potestate [illegible] propter bonum commune [illegible] in communem utilitatem [illegible] et proinde illud exercere nequeunt in detrimentum aliorum, ob utilitatem propriam et privatam sed ad commune bonum, ut unum prae alio non gravent.

Ex [illegible] vero sententia peccat contra justitiam et ad restituendum tenetur, qui ab emptore interrogatus de [illegible] aut variatione futura [illegible] mendacio [illegible] injustitiam et bonum [illegible] aut mendacio [illegible], vel [illegible] de communi bono [illegible] pro decepti illis habenda [illegible] vehementius solito [illegible] emptorem [illegible] plures solito merces emant aut qui ingentes [illegible] multos [illegible] et, quia intellexerunt valorem pecuniae brevi augendum esse.

Quod attinet ad anticipationem solutionis, dicendum est justum pretium [illegible] debere non ex valore praesenti, sed ex valore, quem res habebit eo tempore quo emptori tradenda est. Ratio videtur manifesta: nam merces tunc emptori utilitatem afferunt, cum ei traduntur, non dum perficitur contractus et nisi aliquis vult venditionem mercium traditarum non [illegible] prout sunt actu in [illegible] sed prout erunt [illegible] tempore traditionis, [illegible] ut justum et pretium debet [illegible] mationem [illegible] traditionis tempore habebunt; quod si ex pretio detrahat, detrahit ob anticipatam solutionem, quod [illegible] usurarium. Quare [illegible] emere nunc [illegible] pretio habendo eo tempore quo sperat plus valiturum. Vende contrario licet [illegible] emere minoris quod [illegible] in numero [illegible] [illegible] minus [illegible] tempore traditionis.

Quaeritur tamen utrum liceat syngrapha seu credita minoris emere propter anticipatam solutionem [illegible] ad centum aureos quos [illegible] debet [illegible] post annum [illegible] emere [illegible] 10 [illegible] numeratis tantummodo nonaginta.

Si creditum sit [illegible] [illegible] solutio sit [illegible] aut [illegible] si [illegible] et [illegible] sint [illegible] lucrum cessans aut damnum emergens [illegible] inter se conveniant [illegible] emptor credita [illegible] et tantum in summa credita [illegible] detrahi quanti [illegible] molestiae, [illegible] et difficultates [illegible] lucrum cessans et damnum emergens aestimari videntur [illegible] juxta [illegible] 1204 [illegible] habere [illegible] quando [illegible] ad quod

solut

debitum, quod non potest sine periculo sine labore et sumptibus obtineri

Convenit tamen ferme inter omnes, quod si debitor ipse nequeat suum debitum emere minori pretio quando solutionis difficultas ab ipso proficiscitur, qui cum facile ac sponte solvere deberet, renuit sine creditoris molestia et sumptibus satisfacere. Majorum quippe [illegible] interest debitorum inter, et alios [illegible] inveniant [illegible] in eo statu difficultatis in quo minus valet; quem statum cum ipsi induxerunt, neque auxerunt teneantur, [illegible] sive vel injuste status ille provenerit. At vero sive debitor teneatur ex justitia eum statum difficilis solutionis auferre, [illegible] efficere ut [illegible] minoris aestimationis status non sit. Non ergo potest minori pretio offerre propter difficultates, quarum ipse magnam causam [illegible] debitum [illegible] et [illegible] lite [illegible] debitori [illegible] provenerit, etiamsi ipse [illegible] transigere cum creditore potest, et illo pretio creditum emere quo valere in tali statu prudentum judicio reputatur.

Sed quaeri [illegible] secundum difficultatem solutionis communiter existimet, sed [illegible] non sit difficilis [illegible] [illegible] nempe [illegible] favore Principis et ministrorum [illegible]

Docent communiter, etiam tunc nihilominus licere minori pretio creditum emere. Nam valor rei [illegible] debet ex utilitate personae privatae, sed ex communi existimatione. [illegible] in proposito casu creditum sit obnoxium difficultatibus et expensis communi hominum aestimatione longe minoris [illegible] creditum [illegible] quam [illegible] venale [illegible] [illegible]. Ergo [illegible] minori pretio communi existimatione taxato illud creditum emi valet. [illegible] emptoris tribuendum [illegible] illud exigere possit. Sic juste minori pretio emit aliquis equum ferocem et indomitum, quem ea de causa alii emere recusant, sed emptor artem peculiarem habet equum coercendi et moderandi, nam propter ferociam equus ille in communi aestimatione parvi habetur, et emptoris industriae imputatur, quod postea ipsi utilis fiat. Haec autem utilitas, quae ex emptoris industria aut fortuna provenit, est propria ipsius emptoris bonum, quod ei vendi non potest.

[illegible] difficultas, an creditum liquidum non indebitum, nec periculis [illegible] possit minori pretio emi seclusis lucro cessante et damno emergente.

Sententia communis [illegible] Cajetanum, [illegible] [illegible] et alios docet non licere hoc creditum minoris emere [illegible] continent. Nam [illegible] contractus, in quo [illegible] servatur aequalitas inter pretium et mercem. Atqui in contractu [illegible] liquida, certa et [illegible] minori pretio quam continent, non servatur aequalitas inter pretium et mercem. Ergo minoris [illegible]

[illegible]

quo a centum aureorum in quo [illegible] nulla [illegible], vel molestia nec ullum periculum [illegible] aut damnum emergens [illegible] quidem centum aurei [illegible] presentes [illegible] pro eo [illegible] nunc [illegible] nongenta aurei non [illegible] justi [illegible] inequale [illegible] certum [illegible] centum [illegible] non [illegible] [illegible] nunc et sine ulla difficultate vel damno quisque [illegible] aurei [illegible] haberet [illegible] annum [illegible] [illegible] sola [illegible] ratione temporis [illegible] crediti [illegible] non [illegible] [illegible] in [illegible] foret [illegible] Demum [illegible] Thomas noster, et omnino docet sententia Opusculo 57 ubi hec habet — [illegible] qui ad certum tempus vendit [illegible] ante terminum solvat [illegible] [illegible] considerare videtur, quam manifeste temporis solutionem vendit, unde ad restitutionem tenetur —

Cum [illegible] in emptione creditor [illegible] non [illegible] a [illegible] solvenda [illegible] [illegible] unde tamen [illegible] postea nihil solvat, nihil tamen venditor credit [illegible] quia jam emptor [illegible] totum mercem, seu totum jus ad illam [illegible] autem jus [illegible] minoris [illegible], quia jus minus valet quam ipsa res, et quia pretium [illegible] illius juris [illegible] quod pro eo communiter [illegible], [illegible] ante illa [illegible] pretium [illegible] aequale, ut [illegible] credita [illegible] in tuto [illegible], ut ratione securitatis aequivalent pecuniae presenti. Preterea si [illegible] fore [illegible] [illegible] est maxime ratione [illegible] nulla [illegible] sit [illegible] [illegible] solvendi, in nostro autem [illegible] contrahentium ad aliquem postea solvendum [illegible] [illegible].

Pro [illegible] distinctionem inter jus ad centum aureos et aureos ipsos [illegible] loquendo [illegible] tamen [illegible] in presenti materia et ad [illegible] usuras [illegible] est [illegible] pecunia solvenda, [illegible] ad illam utrumque [illegible] moraliter reputatur, quandoquidem [illegible] periculum [illegible] [illegible] inter [illegible] [illegible] qui actionem habet ad rem [illegible], [illegible] habere videtur. De[illegible] [illegible] pecunia mutuata [illegible] [illegible] jus ad [illegible] [illegible] possunt [illegible] [illegible] post [illegible] numerandam. [illegible] nomine [illegible] [illegible] mutuum [illegible], quo quis dat nunc minorem pecuniae summam, ut majorem postea recipiat.

Apendix.

De monopolio

Monopolium [illegible] vocabulum [illegible] a nomine monos idest unus, et a verbo poleo quod significat vendere [illegible] ratione conventionis, aut [illegible] tanquam unus venditor, aut unus emptor, eo quod inter se devenerint [illegible] vendere aut emere. [illegible] monopolium habet, quando unus aut pauci, aut etiam plures ex condicto conveniunt, ut ad ipsos solos venditio [illegible] [illegible] mercium, aut opera [illegible], ut alii omnes pretio quo ipsi voluerint [illegible] vendere compellantur. Varios monopolii [illegible]

genera monopolii sive conclusiones examinavimus et resolvemus 221

Conclusio I.

Licitum est, justa causa intercedente, monopolium tale exercere, ex facta auctoritate publica, scilicet unus, vel pauci a Principe facultatem obtineant, ut ipsi soli, ceteris exclusis, tale genus mercium [illegible] vendere possint. Communis [illegible] sententia, et quasi omnium receptissima.

Probatur. Bonum [illegible] interdum exigit, ut privilegium vendendi certas merces, vel [illegible] tantummodo, exclusis ceteris, concedatur. Sunt enim aliquae merces, quae sine magnis sumptibus, et periculis comparari nequeunt, easque nemo pararet, nisi haberet privilegium, ut solus vendere queat, ac proinde sine tali privilegio relinquerent [illegible] vendere [illegible] autem privilegii [illegible] mercatores se obligant [illegible] illud genus mercium pro [illegible] tempore et in ea abundantia quam communitas egeat. Accedit quod haec privilegia concedi solent absque privatorum injuria, si [illegible] pretium taxet, nec illud relinquat arbitrio illius, qui talem facultatem impetrat, ne ejus aviditate [illegible] in rebus communiter necessariis ad commode honesteque vivendum, [illegible] quae ad [illegible] voluptatem inserviunt [illegible] venditori laxari [illegible] tamen [illegible] meminerit certos esse [illegible] intra quos debeat [illegible] nec alios [illegible] arbitrio [illegible] Praeterea [illegible] Princeps [illegible] multas [illegible] vendere [illegible] necessitatem [illegible] gravamen [illegible] aequaliter inter subditos [illegible]

Conclusio II.

Peccant non modo mercatores qui conventionem ineunt de non vendendo supra pretium [illegible], sed etiam qui inter se conveniunt, ut suas merces non vendant nisi pretio summo.

Prob. prima pars [illegible] supra pretium [illegible] vendere licet [illegible] monopolium [illegible] restitutionem. [illegible] contraho [illegible] si mercator aliquis [illegible] alios [illegible] pretio vendant, facit injuriam [illegible] alios mercatores [illegible] ne illi [illegible] pretio vendant. Quamvis autem [illegible] non posse [illegible] quia eo ipso justum pretium variet [illegible] justitia pretii [illegible] copia vel difficultate et [illegible] vendent [illegible] tamen [illegible] pretium non [illegible] introducto [illegible] monopolium [illegible] Dominicus, Salmanticenses et [illegible] constituto [illegible] a mercatoribus [illegible] vendendi merces pretio injusto alii mercatores qui monopolii hujus participes non fuerunt possunt contra [illegible]

2. nisi minoris suas merces vendant. Ratio est quia pretium [illegible] ipso in se injustum est, nec mea injustitia [illegible] [illegible] communi [illegible] ergo quemadmodum [illegible] monopolia tale injustum pretium [illegible] ita [illegible] et ceteri qui injuste [illegible] pretium exponunt.

Ex altera parte, [illegible] in communi [illegible] conspiratione non [illegible] pretio [illegible] est [illegible] Ita licet [illegible] non obligat ad vendendum [illegible] obligat tamen ne [illegible] aliis [illegible] pretio venderent, et [illegible] quia impediret [illegible] aliorum et ne [illegible] merces quas erant empturi, nemo [illegible] vellet [illegible] [illegible] sicut caritas licet non obligat ad [illegible] nisi in tali necessitate proximi, obligat tamen ne aliis volentibus [illegible] eleemosinas [illegible] communes [illegible] ita licet non obligat ad remittendum de pretio summo, obligat tamen ne aliis remittere volentibus [illegible] summo [illegible] quamvis [illegible] dolo et mendacio procures.

[illegible] hae conspirationes contra justitiam legalem [illegible] c. de monopoliis sub poena etiam privationis omnium bonorum et exilii perpetui prohibentur [illegible] aliquis aut aliquis, et per [illegible] solo merces aliquas [illegible] et sub poena [illegible] librarum auri vetatur, ne mercatores inter se conveniant de non vendendo merces infra certum pretium vel ultra tale pretium non emendo. [illegible] ne artifices conspirent, ut opus ab uno incoeptum non perficiatur ab alio, neque conspirent ad non docendas artes [illegible] vel [illegible] non locandas operas nisi hoc aut illo pretio. [illegible] haec omnia sunt contra bonum commune, et in multorum detrimentum [illegible].

[illegible] probabilior sententia [illegible] ejusmodi conspirationem non [illegible] nisi summo pretio [illegible] etiam justitiam commutativam et restitutionis debitum [illegible] [illegible] pretium summum sit infra [illegible] justi pretii, et venditores [illegible] habeant ad vendendas merces suas pretio summo, jus tamen non habent ineundi conspirationes quibus omnia pretia [illegible] summum excluduntur. E contrario singuli emptores jus habent [illegible] venalium [illegible] ad emendum intra pretii justi latitudinem prout jura praescribunt. [illegible] ejusmodi conventiones cives hoc jure privant, eisque concessam a lege et jure gentium libertatem eripiunt. Deinde exclusa hac conspiratione cives emerent pretio [illegible] infimo, modo medio, non summo. Ergo conspiratio illa, quae privata auctoritate restringit pretium ad summum, civium detrimento est.

Objiciunt non pauci ex [illegible] Theologis [illegible] [illegible] [illegible] [illegible] volent
[illegible] tibi [illegible] [illegible] nec tenetur ad restitutionem [illegible] [illegible] emere ne tibi vendat nisi pretio justo summo, non peccabit contra justitiam [illegible] juste potest facere, cur non possunt ego juste [illegible] dummodo [illegible] et fraudes non interveniat. Praeterea [illegible] convenire [illegible] [illegible] juste possunt mercatores summo pretio vendere, ergo possunt [illegible] convenire [illegible] [illegible] [illegible]
vendere

vendendi merces [illegible] summo, quod ante conventionem habebant, per conventionem [illegible] emittunt [illegible] [illegible] [illegible] ad restituendum tenentur [illegible] [illegible] [illegible] [illegible] restituere [illegible] a [illegible] [illegible] [illegible] vendere

[illegible] monopolas non solum [illegible] [illegible] sed [illegible] [illegible] [illegible] ligare ad non vendendum nisi summo pretio. ex hac autem [illegible] obligatione [illegible] [illegible] [illegible] [illegible] [illegible] necessitate emendi [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] rigoroso pretio [illegible] [illegible]. [illegible] [illegible] [illegible] contra [illegible] [illegible] [illegible], ut mihi non [illegible] [illegible] summo, aut non conferat mihi beneficium [illegible] contra [illegible] [illegible] acceptare [illegible] quia jus habeo, ut unusquisque [illegible] vendendi mihi [illegible] justo pretio. [illegible] ergo [illegible] continet injustitia, quando tale [illegible] necessitatem [illegible] [illegible] [illegible] [illegible] [illegible] monopolas restituere debere non propter excessum in pretio, sed propter injuste ablatam [illegible] tate emendi [illegible] [illegible] quae restitutio ex prudentis viri arbitrio [illegible] [illegible] juxta [illegible] majorem et minorem quam [illegible] [illegible] [illegible] emere viliore pretio

Quod autem [illegible] de [illegible] [illegible] [illegible] pretii [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] tamen [illegible]

Conclusio III.

Qui [illegible] suas merces [illegible] [illegible] fraude impediunt ne merces aliunde [illegible] [illegible] [illegible] justitiam [illegible] tenentur ad [illegible] [illegible] [illegible] qui carius emere coacti sunt ob majorem mercium inopiam [illegible] mercatorum [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] promoverunt

[illegible] [illegible] [illegible] [illegible] [illegible] mercatores ante [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] merces suas [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] extraneos mercatores excludere [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

... [illegible] sunt merces et [illegible] ... temperantia ... ut [illegible] ... carita[illegible] [illegible]

Quando enim ... [illegible] ... maxime ... vini pretio tunc currente, ut caritatem inducant ... [illegible] ... pretio ... contra iustitiam et ... [illegible]

[illegible] ... contra ... Reipublicae ... damni ... [illegible] ... infimo pretio ... ab avaris mercatoribus ... pretio emere ... huiusmodi mercatores non ... qualitatem inter merces et pretium ... frumentum ... [illegible] ... sentiri ... [illegible] ... merces ... et inde carum pretium augeatur ... [illegible] ... cum tamen ... [illegible] ... comprimunt frumentum ... carior ... [illegible] ... non sunt tamen iniustae ... venditioni ... in illud tempus ... quo pluris valitura ... damni ... [illegible] ... supprimendo non inducatur caritas

Articulus ultimus

De vitiis, quae aut emptori, aut venditori superadduntur.

Regula generalis ... contractus ... quibus ... iusto pretio ... emptor aut venditor ... pretio ... aequalitati ... emptor ... [illegible] ... [illegible] ... iustum pretium ... tamen ... [illegible] ... retrovendendi et [illegible]

[illegible] ... quod ... vocant [illegible] ... [illegible] ... merces ... pretio ... [illegible] ... merces ... [illegible]

probabiliter [illegible] contractu emptionis cum pacto [illegible] retrovenditionis [illegible] intentione [illegible]

Porro in monopolii contractu [illegible] justo pretio [illegible] emitur [illegible] pacto [illegible] retrovendendi eas merces pretio infimo et emptori [illegible] aut merces, pretio [illegible] Porro etiam [illegible] mercator [illegible] venditionis et emptionis [illegible] necessario [illegible] [illegible] impetu et [illegible] communiter habent [illegible] aurea et argentea [illegible] pretio [illegible] commutato arte labore [illegible] remunerato [illegible] habent [illegible] solius materiae [illegible] operis et [illegible].

Quidam cum S. Antonino docent [illegible] extrinseco [illegible] licite emere non esse ab emptore infimo pretio easdem merces, [illegible] tamen [illegible] sententia [illegible] ex [illegible] prohibitione legis quae [illegible] non interveniente scandalo et [illegible] infamiae contrahentis nulla [illegible] injustitiam committit [illegible] mercator [illegible] pretio [illegible] merces vendidit, [illegible] emptor [illegible] venditor [illegible] quilibet [illegible] eas merces emere infimo pretio cur id non licet etiam venditori [illegible] libertatem eas [illegible] vel [illegible] emptor [illegible] venditor gravat [illegible] vendi alium emptorem aut [illegible] emptore [illegible] merces [illegible].

Pactum retrovendendi aut redimendi [illegible] solent venditores quando [illegible] res aliqua vendita [illegible] venditori [illegible] reddere [illegible] emptori [illegible] venditor [illegible] pretio et [illegible] emptori [illegible] simul quando contrahentes [illegible] inter se conveniunt et [illegible] venditor [illegible] contracto [illegible] venditori [illegible] Interea [illegible] determinatione [illegible] tempore et [illegible] res vendita [illegible] ante certum tempus [illegible] certo tempore [illegible] [illegible] pretio quo vendita [illegible] pretio [illegible] retrovenditionem tempore [illegible] breviter [illegible].

[illegible] I

320 Quid [illegible] pactum retrovenditionis [illegible] verum [illegible] [illegible] conditiones [illegible] ag-
grande [illegible] est [illegible] sententia.

Prob. Hoc pactum admittitur a iure canonico ut constat ex [illegible] extravaganti de emptione et ven-
ditione inter communes [illegible] [illegible] [illegible] (de [illegible] inter emptore et venditore [illegible] [illegible]
dominus [illegible] [illegible] non vendere, ita conditiones [illegible] limitare et imponere emptori onera quae voluerit,
dummodo tamen non repugnent [illegible] contractus, et [illegible] onera [illegible] pro eorum estimatione [illegible] et la-
[illegible] conditionis [illegible] pacto retrovendendi [illegible] contractui [illegible] [illegible] videri potest [illegible] emptor interi
percipiat fructus rei [illegible] et [illegible] [illegible] [illegible] soluto pretio [illegible] [illegible] in [illegible] contrarium [illegible]
[illegible], et in conditione [illegible] [illegible] nihil [illegible] [illegible] [illegible] potest [illegible] [illegible]
[illegible] [illegible] emptor [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] mutuatarius
[illegible] [illegible], etiamsi [illegible] mutuanti [illegible] perierit, [illegible] [illegible] perierit: [illegible] emptori perit, nec te-
netur venditor restituere [illegible], nisi [illegible] res vendita existat.

Omnes [illegible] [illegible] [illegible] precavit [illegible], ut terra non venderetur in perpetuum [illegible] [illegible]
[illegible] [illegible] [illegible] conditione [illegible] [illegible] simul precavit et [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] tanquam [illegible] [illegible] capitulo ad nostram
[illegible] De emptione et venditione. ergo.

[illegible] Deus [illegible] [illegible] ne [illegible] nimis [illegible], et alii ad [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] possessiones
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] pretio possessiones [illegible]
ante iubilaeum [illegible] fructus [illegible] [illegible] [illegible] pretii. [illegible] [illegible] [illegible] minus [illegible]
[illegible] quo minus distabat annus iubilaei, quo [illegible] [illegible] restituere erant sine ullo pretio [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] autem [illegible] capitulo ad nostram [illegible] contractus [illegible] quando conditione [illegible] [illegible] interveni-
ret [illegible] [illegible] omnes [illegible] [illegible], [illegible] et [illegible] [illegible] [illegible] [illegible] [illegible] pretio [illegible] [illegible]
contractus [illegible] non [illegible] [illegible] contractus [illegible] [illegible] conditioni [illegible] [illegible] et [illegible] [illegible], [illegible]
emptor [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] emptor non poterat [illegible] pretium ante [illegible]
[illegible] [illegible] [illegible] quia [illegible] [illegible] fructus [illegible] [illegible] [illegible] volebat

[illegible]

Addidi in conclusione, modo conditiones opponendae [illegible] sint [illegible] ut contractus celebratus [illegible] vero animo vendendi, et emens [illegible] percipiente [illegible] pretio, [illegible] maneret [illegible]. [illegible] inde provenies [illegible] [illegible] quia sic exigit natura contractus

[illegible] conditio [illegible] ut [illegible] [illegible] venditor [illegible] [illegible] vana vana [illegible] [illegible] vendita sit, cum fructibus retineat

[illegible] et tantum pretii detrahatur, quanti iuxta prudentem aestimationem [illegible] [illegible] illud privat emptorem facultate merces [illegible] retinendi, et [illegible] valet [illegible] to retrovendendi, [illegible] minoris valet [illegible] [illegible], quando emptor [illegible] [illegible] ad [illegible] et restituendi venditori pretium offerenti. [illegible]

[illegible] autem si emptor medio illo tempore rem alteri vendiderit, [illegible] venditor a [illegible] emptore [illegible] oblato pretio rem a se [illegible] [illegible] vendita [illegible] an vero prior emptor teneatur tantummodo venditori [illegible] esse, et [illegible] emptor [illegible] retinere valeat controversum [illegible] pendet ex intentione contrahentium [illegible] in dubio [illegible] [illegible] sententia [illegible] quod venditor reservet [illegible] ius in re vendita, [illegible] ut [illegible] [illegible] [illegible] retrovenditionis obligationem retineat.

[illegible] [illegible] pretio [illegible] res [illegible] [illegible] pacto retrovendendi, [illegible] [illegible] [illegible] [illegible] pretio [illegible] [illegible] [illegible] venditur res [illegible] [illegible] retrovenditionis [illegible] [illegible] debet [illegible] infra iustum propter onus illud impositum emptori [illegible] [illegible] [illegible] pretio tunc [illegible] debet

[illegible] [illegible] [illegible] ut retrovendat [illegible] [illegible] [illegible] quando [illegible] vendit cum pacto retrovendendi [illegible] [illegible] minoris valet [illegible] [illegible] [illegible] [illegible] autem ab emptore [illegible] [illegible] [illegible] [illegible] quia [illegible] onus impositum. Pro [illegible] retrovendi debet pretio currente [illegible] [illegible] tempore valuerit. Oppositam opinionem [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] voluerunt velle indissolubiliter, vel dissolubiliter [illegible] [illegible] contrahere. [illegible] dissoluto [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] pretio [illegible] ut compenset onus emptoris. [illegible]

quia

528 aequalitas [illegible] non servaretur [illegible] emptor [illegible]

[illegible] emptor exigere potest, ut majus [illegible] vel ex melioratione intrinseca vel [illegible] emptor [illegible]

[illegible]

[illegible] II.

[illegible] quamvis in [illegible] et [illegible]

[illegible]

[illegible] intervenit [illegible] res [illegible]

[illegible] emptori [illegible]

[illegible] emptor [illegible] venditor teneatur [illegible] ad arbitrium

[illegible]

[illegible] emptor non habet

[illegible]

[illegible]

[illegible]

[illegible] ut contractus [illegible]

[illegible] emptor [illegible] propter [illegible]

[illegible]

[illegible] emptori [illegible]

[illegible]

[illegible] hunc

[illegible]

[illegible] contractu [illegible] et ad se [illegible]

[illegible]

[illegible] et [illegible] bona mobilia [illegible] habeant alie-

[illegible]

hanc materiam pertinent [illegible]

Qui [illegible]

[illegible] quo jus lege [illegible] contra justitiam per fraudem [illegible] ne consanguineus [illegible] a suo consanguineo [illegible] et retrahat. Item peccant contra justitiam emptores [illegible] pretio [illegible] fine, ut difficile faciant retractum.

Dixi vero jus concessum proximo consanguineo venditoris [illegible] jus retractus [illegible] consanguineos proximiores [illegible] ceteris. Sequitur vero peccare contra justitiam extraneos qui consanguineos venditoris [illegible] tali titulo rem venditam retrahunt. Faciunt enim emptori injuriam [illegible] in eius praejudicium utuntur jure quod non habent. Item peccant ipsi consanguinei quando retrahunt in favorem [illegible] quibus [illegible] necessariam ad [illegible] accipiunt, et quando retrahunt et maiori postea pretio vendunt. Lex enim non impertit hoc jus nisi ad familiarum conservationem [illegible] et nomini consanguineus [illegible] retineant. Atque hinc est quod consanguineus saepe jurejurando affirmare cogitur, [illegible] retinendi [illegible] redimat.

Dixi denique adesse ex secunda conditione rei immobilis, tum quia bonum non habet retractum nisi [illegible] titulo venditionis alienata fuit, et ad alias alienationes non extenditur; tum quia bona mobilia quantumvis pretiosa, retrahi nullo modo possunt.

Praeter haec, quae sunt de jure communi, [illegible] natio [illegible] habet peculiares leges consuetudines observandas. Consule capitula 89, 90, et 91 constitutionum hujus Patriae, ubi [illegible] retractu [illegible] constituuntur.

Caput XV

De emptione et venditione in censibus.

[illegible] census [illegible] transeamus, [illegible] et [illegible] vendantur [illegible] et [illegible] [illegible] seu estimandis [illegible] ali [illegible] seu estimatione [illegible] censum [illegible] singulis [illegible] capita et tributa [illegible] significat estimationem bonorum, [illegible] tributa [illegible] aliquo solvenda. De quo censu in praesentiarum [illegible]

[illegible] I

[illegible] sit census

[illegible]

[illegible] persona alterius [illegible] in [illegible] permutatione et [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] alterius [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] persona alterius, [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] etiam in persona [illegible] persona [illegible] [illegible] [illegible] dia vel officio alicui [illegible]

Census [illegible] in reservativum et consignativum. Reservativus dicitur, [illegible] qui rei suae dominium [illegible] reservat. Quare census iste ad [illegible] nostrum [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] in sui constitutione [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] sibi reservare velit.

Census consignativus [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] in [illegible] pensionis. Hujus [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

Census [illegible] [illegible] [illegible] [illegible] [illegible] ex parte fundamenti, seu ex parte rei [illegible] [illegible] [illegible] [illegible] [illegible] et mixtus. Census realis ille est qui constituitur super re aliqua immobili, et fructifera, quae immediate afficit [illegible] [illegible]. Census personalis immediate [illegible] super persona alterius, quae sola obligata manet [illegible] habet, si persona perit, et non res [illegible] [illegible]

[illegible] census [illegible] ratione pensionis in [illegible] et [illegible]. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] determinata [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

solvi debet iuxta [illegible]

[illegible] 10 [illegible] ad decem annos. vitalitius ad tempus incertum v.g. ad vitam [illegible] vel ad vitam vendentis census. Perpetuus ita perisibit, ut [illegible] census redimibilis, qui nimirum ad [illegible] pro diversitate conventionum, quas inter se stipulati [illegible]

Articulus II

De [illegible] census [illegible]

[illegible] contractus [illegible] de constitutionibus Pontificiis. Quod supponimus in [illegible] et [illegible] iure [illegible] de iure humano, et simul [illegible] census [illegible]

[illegible] I

[illegible] fructuarius, sive [illegible] pecuniarius [illegible] pretio emptus, per se iustus [illegible]

[illegible] rei [illegible] remanente [illegible] venditores [illegible] intermerce, et [illegible] ergo licite [illegible] fructus [illegible]

Probatur [illegible] census [illegible] contractus [illegible] licite [illegible] contractu, qui duobus [illegible] fructus et pars illa [illegible] obligatione [illegible] determinata [illegible] quantitate. Atqui in hac [illegible] census [illegible] census realis [illegible] licite [illegible]

[illegible] fructum [illegible] tamen certa ac determinata [illegible] fructus [illegible] conventionis, quae [illegible] contrahentis [illegible]

vitan

1512 [illegible] manet tamen [illegible] obligata [illegible] solvendi, [illegible] emptor [illegible] ut personali obligatione [illegible], sed [illegible] obligatione [illegible] ad majorem securitatem [illegible].

Propositio II.

Census realis perpetuus, [illegible] licitus est [illegible] Theologi

Probatur [illegible], [illegible] inter emptionem census realis et inter emptionem alterius rei [illegible] ita fieri potest et [illegible], ut [illegible] [illegible] [illegible] census realis [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] in censu [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], et [illegible] [illegible] [illegible] ex agro empto [illegible] [illegible] [illegible] quod emptor pro [illegible] solvit, nec tamen emptor injuste [illegible] ergo idem de censu [illegible] [illegible] census [illegible] [illegible] venditione cujus ea est communiter conditio, ut sit perpetua.

Propositio III

Non modo licitus est census realis [illegible] redimendi in favorem solius venditoris, de quo nullus [illegible] etiam census realis, [illegible] ut venditor [illegible] [illegible] emptori [illegible], [illegible] Theologi.

[illegible] in favorem [illegible] emptoris [illegible] [illegible] [illegible] [illegible], quia in emptione census [illegible] tali pacto nullum intervenit mutuum [illegible] mutuum [illegible] [illegible], in censu autem reali [illegible] [illegible] [illegible] census [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

Unde [illegible] census [illegible] [illegible] temporis determinati [illegible] [illegible] [illegible] etiam [illegible] ad [illegible] annos, [illegible] etiam [illegible] communiter [illegible] posse census realis constitui ad tempus incertum [illegible] emptoris [illegible] [illegible] [illegible] [illegible] pensiones [illegible] anno [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

ablat

[illegible] et morbo emator [illegible] ipse, vos census [illegible] si aute [illegible] mortale [illegible] est, [illegible] contractus [illegible] et [illegible] mentis [illegible] autem [illegible] de eorum statutio personam qui [illegible] contrahentes se [illegible] periculo damni, et lucri, quod periculum re ipsa est in censu [illegible] personali propter incertitudinem mortis que citius aut tardius accidere potest. . . —

Propositio IV.

Ut census realis licitus sit ex jure nāre quinque conditiones sunt necessarie. Primo, ut adsit vera intentio emendi et vendendi, 2do ut census justo pretio vendatur, 3tio ut census constituatur super re aliqua fructifera, ita ut pereunte re census sublata sit in toto aut ex parte, 4to ut ipsa censuarii rari productio census pereat, 5to denique ut res censui venerit sit domus absoluta rei super qua census constituit et illius habeat liberam administrationem.

Prob. prima pars. Deficiente vera intentione emendi et vendendi [illegible] anna censionem, in quo consistit natura census contractus [illegible] mutuum, [illegible] nihil ultra sortem exigi potest.

Prob. altera pars, seu altera conditio. Justitia, [illegible] ex nāra rei in quolibet contractu emptionis et venditionis requiritur ergo etiam in contractu census justum vero census pretium [illegible] illud quod lege principis aut magistratus definitum est. [illegible] taxatio fieri solet ut census non minori pretio ematur [illegible] pretium naturale [illegible] autem [illegible] taxante pretio, [illegible] prudentum arbitrio [illegible] solent [illegible] viginti pro uno annuatim [illegible] augeri

[illegible] redimibilis vel irredimibilis semel constitutus et emptus [illegible] pretio [illegible] librarum pro annuis [illegible] minori pretio aut vendi majore [illegible] semel constitutus [illegible] intrinsece [illegible] valore propter [illegible] in hypotheca vel [illegible] canone [illegible] jure [illegible] minori pretio [illegible] sicut [illegible] semel [illegible] pretio emptae possunt postea minoris [illegible] census [illegible] intrinsece [illegible] circumstantias [illegible] propter [illegible] et similia, que

524 [illegible] et valor rei [illegible] sicut [illegible] minori pretio empta, [illegible] majori pretio vendere [illegible] pretium [illegible] [illegible] [illegible]. quidni similiter et [illegible]. [illegible] spectato [illegible] [illegible], possunt [illegible] et [illegible] ab initio convenire et [illegible] non pretio prius soluto sed justo valore, quod redemptionis tempore habebit [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] valor [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] convenientia [illegible] non, [illegible] [illegible] ad instantiam venditoris censum redimit quod [illegible] non tenebatur sed poterat in eo statu periculoso [illegible] esse. [illegible] eum etiam in prima constitutione emi [illegible] minori pretio propter incertitudinem pensionis aut difficultatem, quae [illegible] in exigendis pensionibus [illegible] [illegible] notabiliter [illegible] [illegible] emi potest, est venditor tenetur tum in pretio [illegible]. Deinde pretium in eo casu non est sola pecunia quam emptor solvit pro censu sed etiam damnum aut periculum [illegible] vel lucrum quo se privat in gratiam venditoris [illegible] pretio qui [illegible] et simul cum pecunia [illegible] [illegible] possunt totum pretium etiam lege taxatum.

[illegible]

[illegible] nihil [illegible] si res [illegible] [illegible] non sit. [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible]

[illegible] in censu [illegible] [illegible] census [illegible] [illegible] [illegible] et [illegible] si res deterior evadat. [illegible]

[illegible]

[illegible]

[illegible] [illegible] [illegible] et [illegible] [illegible] [illegible] jure [illegible] [illegible]

[illegible]

[illegible]

[illegible]

[illegible] [illegible]

[illegible] V [illegible] [illegible] [illegible] V. in [illegible] [illegible]

cul

[illegible]
[illegible] vallari [illegible], quae [illegible] stabilierunt, quae [illegible] V. ampliavit, et clarius [illegible]
[illegible]

[illegible] constitutio non [illegible] nisi [illegible] aut [illegible] per [illegible]
[illegible]
[illegible] X [illegible]
[illegible] personale [illegible]
[illegible] propter [illegible]
[illegible] tamen [illegible] V. constitutio
[illegible]
[illegible]
[illegible]
[illegible] tamen [illegible]
[illegible]
[illegible] V [illegible]
[illegible] in qua [illegible] constitu-
[illegible] non [illegible]
[illegible]

[illegible] Honorati [illegible] et [illegible]
[illegible]
[illegible] industria et labore [illegible]
[illegible]
[illegible]
[illegible] persona [illegible] non [illegible]
[illegible]
[illegible]

.3526 [illegible] Vatvch, potest etiam conventione [illegible] [illegible] [illegible] [illegible]

[illegible] industria. [illegible] obligationis [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] fundamentum [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] ... non poterit personalis censu[illegible] [illegible]

[illegible] [illegible] ad aliquid [illegible] pro pretio presenti non potest vendere [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] a mutuatario non [illegible] [illegible] [illegible] [illegible]

mutuo dato [illegible]. Et [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] mutuo [illegible] [illegible] industriae et [illegible] [illegible]

[illegible] negotiationem et [illegible]. Nam ab emptore censuum utrinque redimibilis repetitur capitale pro arbitrio, sicut a

mutuatore pro libito repetitur [illegible] [illegible] [illegible] [illegible] mutuatores [illegible]

[illegible] mutuata [illegible] [illegible] [illegible] [illegible] annua [illegible]

Hoc argumento [illegible] [illegible] [illegible] non [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] et in hoc [illegible] mutuo [illegible] usura [illegible] mutuo [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] mutuum [illegible]

[illegible] in personam [illegible], [illegible] non evitatur usura [illegible]. Deinde [illegible] in [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] a mutuatario [illegible] non [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] aut ratione [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible]

[illegible] census, [illegible] mutui.

[illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] non [illegible] [illegible] [illegible] [illegible] sicut [illegible]

aliquae venditae aestimandae sunt. Census igitur personalis illicitus est, quia [illegible], quod [illegible] tali contractu non est aliqua [illegible]

[illegible] [illegible] sed aliquam [illegible] [illegible] cujus [illegible] valor [illegible] [illegible]. Nam de ratione [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

conva

[illegible] ut [illegible] non [illegible]

[illegible] cum [illegible] [illegible] tamen [illegible] in [illegible] [illegible] ex communi [illegible] sententia conveniunt [illegible] renovatio [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] de [illegible]

[illegible] generaliter [illegible] [illegible] [illegible] [illegible] in personae [illegible] [illegible] tamen [illegible] [illegible] [illegible] [illegible] in [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] circumscripta.

[illegible] in pecunia numerata [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], et census realis non [illegible].

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] interesse da [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] con le solennità [illegible] [illegible] [illegible] interesse [illegible] di quella se ne [illegible] [illegible] [illegible] [illegible] la qualità [illegible] [illegible] e ciò [illegible] [illegible] anco nelle [illegible] [illegible] stabili. [illegible] [illegible] e ogni [illegible] [illegible] [illegible] [illegible] [illegible] non erano [illegible] [illegible] in [illegible] ne [illegible] interesse [illegible] [illegible] [illegible] [illegible] [illegible] della qualità [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible]

.528 pro [illegible] ita [illegible] et [illegible] sit [illegible] nullus [illegible] intervenerit [illegible]

[illegible] dicatur intervenisse pecunia

[illegible] pecuniam [illegible] venditor [illegible] pecunia [illegible]

[illegible] non e [illegible] hujusmodi [illegible] contra [illegible] [illegible]

[illegible] pretium [illegible] non [illegible] quod [illegible] et [illegible]

[illegible] constitutionem [illegible] subjungit [illegible] ad [illegible]

[illegible] testimonii [illegible]

[illegible] che liquidata [illegible] certa la quale

[illegible] con testimonii, e con il giuramento [illegible] il contratto nullo. e l'interesse o frutti

[illegible] pagamento del credito, [illegible]

[illegible]

[illegible] juris naturalis [illegible] non sit solvendum id quod non debetur, [illegible]

[illegible]

[illegible] obligantes ad [illegible]

[illegible] et [illegible]

[illegible]

quamvis debito sufficiens pretio non videatur [illegible] tamen Pontifex voluit [illegible] hujusmodi [illegible]

[illegible]

[illegible]

[illegible] vero si debitum illud incertum reducatur ad quantitatem certam et

determinatam sive fructus plures, sive pauciores, sive etiam aliquo anno nullos fructus ferat, tunc obligatio solvendi [illegible]

[illegible] etiam anno sterilitatis non e contra, sed [illegible] usura [illegible]

[illegible] partem aufferens [illegible] facultatem [illegible]

[illegible]

[illegible] inter vivos, [illegible] alienari [illegible] vendenda sit [illegible] alios

[illegible] circa hanc clausulam [illegible]

[illegible]

[illegible] dominium [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ad aliud dominium cum re ipsa transire

[illegible] conditio et clausula sic statuit — [illegible] [illegible], [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] quanto [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] dandus, aut vel censum solutum, seu aliquam ejus partem amittere, aut aliud per eorum contractum sive aliunde acquirere, [illegible] [illegible] [illegible] [illegible] ex [illegible] [illegible], [illegible] [illegible] — [illegible] [illegible] hanc clausulam non [illegible] [illegible] [illegible] [illegible] [illegible], aut in [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] non [illegible], aut [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ex [illegible] [illegible], sed ex ipso contractu. [illegible] [illegible] potest etiam principaliter convenire de compensatione damni emergentis, quod ex una parte jure naturali compensari debet [illegible] [illegible], et ex altera parte Summus Pontifex non vult [illegible] ut apponatur pactum de lucro cessante, sed non [illegible] pacta de damno emergente. [illegible] [illegible] [illegible] obligatione [illegible] [illegible] [illegible] [illegible] ad [illegible] [illegible] [illegible], quod intrinsecum vocatur, et [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] solvi debebat [illegible] duobus aureis [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] erat et [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] uno aureo [illegible] [illegible] [illegible] [illegible] [illegible] damno emergente [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] lucrum cessans [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] erat [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

Tertia clausula et conditio est sequens: — [illegible] et censum augeri, et novum [illegible] super eo [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] solutis vel in futurum [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ex [illegible] [illegible] non sit prohibitum, merito tamen [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], et [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] annullamus vocem continentia solutiones [illegible] ad [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] ad [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] non [illegible] [illegible]

[illegible] — extremo census [illegible] in [illegible], ve in [illegible], vel in [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] census [illegible] et [illegible] etiam non [illegible] [illegible] et [illegible], juxta [illegible] [illegible] [illegible] aliter [illegible] solum per partes [illegible] separata [illegible]. [illegible] enim [illegible] [illegible] sufficiente, [illegible] census [illegible] [illegible] sufficientes [illegible] [illegible] [illegible] [illegible] [illegible] a Sanctissimo [illegible] 1520 [illegible] 1535 et responsa Pontifex [illegible].

Decimo S. Pius ita decrevit — [illegible] census [illegible] non obstante [illegible] [illegible] [illegible], [illegible] et [illegible] non obstantibus [illegible] [illegible] [illegible], [illegible] aut [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] et non [illegible] [illegible] [illegible] [illegible] observari [illegible], [illegible] [illegible] ac [illegible] [illegible] [illegible] nec unquam et effectus sortiri [illegible] — [illegible] quod clausula contra Navarrum [illegible], [illegible], et alios dicendum [illegible] quod absolute [illegible] Pontifex prohibuerit [illegible] census [illegible] [illegible] verba [illegible] [illegible] [illegible] [illegible] pacto [illegible] annullant, et auferat [illegible], [illegible] [illegible] [illegible] [illegible] magna [illegible] [illegible] [illegible] [illegible] compensatione tantum sibi onus imponi permittat.

In undecima clausula [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible].

In duodecima clausula — [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] non obstantibus, [illegible] [illegible] [illegible] [illegible]

onti

contingat [illegible] esse [illegible] — Quamobrem forma a Pontifice praescripta [illegible] qua deficiente deficit contractus [illegible] observari etiam in foro conscientiae debent. [illegible] ipso unusquisque contractus [illegible] irritat, [illegible] non [illegible] ut justo titulo sed ut lucro [illegible] contra [illegible] accipiat [illegible] destructo titulo [illegible] lege [illegible] eo ipso lege naturae [illegible] autem in hanc conditionem [illegible] non [illegible] [illegible]. Debent etiam [illegible] minime [illegible] quae fiant [illegible] etc.

[illegible] Pontifex [illegible] — hanc autem [illegible] [illegible] Decernentes pretium [illegible] aut contrahentium [illegible] vel augeri — Hoc loco unusquisque multis [illegible] Pontifice [illegible] augmentum, aut decrementum [illegible] non autem quando [illegible] vendit censum, qui progressu temporis evasit periculosus, et [illegible] maxime [illegible] difficiles evasit [illegible] pretio [illegible] fuerant [illegible] fert.

Atque haec de contractibus [illegible] quae [illegible] et aliis [illegible] memoriae oportet ut fideli populo commonstrare [illegible] procul a [illegible], procul a [illegible] [illegible], procul a nundinis, procul ab officiis, procul a [illegible]

Finis Secundi Tomi

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Conclusio IV.

Pupilli pubertati proximi, et minores ne naturali quidem obligatione afficiuntur, dum sine licentia tutoris aut curatoris etiam de rebus mobilibus ad triennium non duraturis disponunt. 22.

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Certum est necessarium esse [illegible] consensum ad contrahendum [illegible]
Certum est pariter [illegible] se obligari, se non volendi [illegible] quibus [illegible] p. 26.
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Materia arbitrii et compromissi est qualibet [illegible] et a canonicis vel [illegible] non [illegible]. Quis dici arbiter.
Quinam sunt arbitratores. Quomodo definitur transactio. 194.
An quando [illegible] transactionem bona fide initam [illegible] ex hoc [illegible] capite illa requirit valeat.

Articulus III

De pignore et hypotheca, de fidejussione et [illegible].

[illegible]. 195. et seq.
Quaenam sunt [illegible] pignus dat vel hypothecam. 196.
Quaenam sunt obligationes illius, cui pignus aut hypotheca [illegible]. 199. et seq.
Quid [illegible] et [illegible] habeat [illegible].
Quid fidejussio. 202.
Quinam fidejussores [illegible].
Quando [illegible] fidejussores [illegible] ad [illegible] gulicentur. 204.
An fidejussor [illegible] in conscientia obligatus sit [illegible] ejus obligatio transeat ad haeredes, et [illegible] jus aut fidejussori aut haeredi [illegible] solverint. 205.
Quando fidejussor [illegible] agere [illegible] fidejussor [illegible] fidejussionis [illegible]. 207.

[illegible]tiones hujus Patris circa [illegible] in quibus [illegible]
[illegible] a jure communi. Qui[illegible] 206
[illegible] a [illegible] pro [illegible] contractu [illegible] 207

Art. IV.

De comodato, et precario:

[illegible] et [illegible] explicatio. 208
Quid precarium. [illegible]

[illegible] II.

De mutuo, et usura. [illegible]

Articulus I.

De mutuo.

[illegible] mutuum, et distincta definitionis explicatio 2[illegible] et seq.
[illegible] imperitia [illegible] qui.
[illegible] 214 et seq.
[illegible] huic privilegio renunciare.
[illegible] 215
[illegible] in [illegible] onera alicui [illegible] 216.

Articulus II.

[illegible] quotuplex et [illegible] usura [illegible]

Quid usura [illegible] vocis origine. 217.
[illegible] definitio usura et explicatio definitionis. 218 et seq.
[illegible] usura. 220 et [illegible]

[illegible]

Conclusio I.

[illegible] usura [illegible]

Conclusio II

[illegible] usura [illegible] ex [illegible]

Conclusio III

[illegible] aliquid [illegible] Ethicus.

Lex vel consuetudo [illegible]

Articulus III

[illegible]

... exigit titulo periculi amittendae sortis vel [illegible] ... lucri cessantis.

[illegible]

[illegible] supra [illegible]

[illegible] II

[illegible] et secundum se [illegible]

[illegible] I sequitur [illegible]

[illegible] III

[illegible] extrinsecus et particula[illegible] [illegible] sorte [illegible] aut [illegible]

[illegible]

[illegible] exigit ratione periculi extra [illegible] ac molestam [illegible]

Quid damnum emergens, et an liceat ejus [illegible] [illegible] et quomodo. 247

[illegible]

[illegible]

Articulus IV

De usura punitiva. 251

[illegible]entia communis [illegible] defendit [illegible] esse pactum poenae conventionalis [illegible] contractus, nempe [illegible] mutuatarius [illegible] tempore [illegible] restituto sortes non [illegible] aliquid ultra [illegible] solvat in poenam suae morae [illegible] damno emergente et lucro cessante. Et conditiones [illegible] pro pacto hujus poenae. 252

Articulus V.

De usura curatoria, seu de pactis, quæ mutuo adiecta contractum reddunt usurarium.

Regula generalis ad dignoscendum quando usura committitur. 253.

An valeat in pactum deduci amicitia, injuriarum condonatio, et quæ debita sunt vel ex justitia vel ex alia virtute 254.

Sitne mutuum dare cum pacto, ut alter in posterum remutuet. 255.

[illegible] dari mutuum ea conditione ut mutuatarius debeat illam pecuniam [illegible] mutuantis à quo non ita facile obtinebitur: item an [illegible] obligare mutuatarium [illegible] in [illegible] non indiget demum ut restitutionem tali loco vel tempore [illegible] 257

[illegible] pactum ut restituatur res mutuatario in eadem [illegible] et quantitate vel pecunia in eadem specie physica. 258

[illegible] hac Regione [illegible] 259

[illegible] conservatis [illegible] et [illegible] donec tibi pretium solvatur 260

Articulus VI.

De usura mentali.

[illegible] esse usurarium esse mutuare ob spem lucri tanquam finem [illegible] intendit [illegible] quamvis intendat duntaxat [illegible] ex mutuo: sicut sperare aliquid ex mera [illegible] mutuatarii sine debito, et pacto. An liceat non solum [illegible] 262.

[illegible] hanc secundariam intentionem internam [illegible] nullo [illegible] ultra sortem [illegible] non esse usuram [illegible] ingratus. 263.

Articulus VII.

[illegible] poenis usurarii, [illegible]

[illegible] usurarius requiratur. 265.

[illegible]

[illegible] si mutuatarius dederit aliquid ultra sortem animo [illegible] tionem debiti et mutuans illud acceptavit [illegible]

Quid si mutuator bona fide celebravit contractum usurarium [illegible] qui erat contractus iustus [illegible] cognito postea usurae crimine? 266.
Quis usurarius notorius [illegible] 267 et seq.
[illegible] qui in [illegible] contractu usurarii ad [illegible] 20[illegible] et seq.

Caput III.

De venditione et emptione.

Articulus I.

Quid sit emptio et venditio [illegible] 2[illegible]2.
Quomodo emptio [illegible] ex qua [illegible] difficultates resolvuntur 2[illegible] et seq.

Articulus II.

Qui possit [illegible]
Quinam non valeant vendere nec emere. Quid, et [illegible] negotiatio. 278, et seq.

Propositio
Sub mortali clericis et Religiosis vetita est non solum negotiatio proprie [illegible] [illegible] et [illegible] quae ipsi valde affinis est. Et variae resolutiones ex hac propositione, [illegible] 28[illegible] et seq.
[illegible] item negotiatio. 282.

Articulus III.

Quid vendi possit et quomodo vendi debeat, seu [illegible] vendibili, et de obligationibus venditoris.
Plura circa venditiones hereditatis [illegible] 28[illegible]. et seq.
An valida sit rei alienae venditio.
Quid dicendum de eo qui rem alienam domini [illegible] 290
Quid de eo, qui rem [illegible] 291.
[illegible] 292
[illegible] 293. et seq.

Articulus IV.

De pretio et [illegible]
[illegible] quodnam pretium [illegible] Regula generalis circa pretium [illegible] 296

Conclusio I.

Quando pretium lege definitum est, vendi merces omnino debent pretio legali, nisi evidenter constet de injustitia taxæ. 297.

Conclusio II.

Si nulla lege pretium taxatum sit, venditor non debet justi pretii naturalis latitudinem excedere, emptor vero debet justi vulgaris pretii quantitatem attingere, secus omnis emptio et venditio per se injusta est, et venditor, aut emptor etc. 298.

Conclusio III.

Si pretium legitimum majus sit quam vulgare ordinarie non licet, nisi hic legitimum [illegible]. 300.

Conclusio IV.

Si pretium legitimum minus sit quam vulgare non licet vulgare pretium exigere, sed solum legitimum. 301.

Conclusio V.

Non pro arbitrio venditoris sed secundum æstimationem communem emptorum ea vendi debent quæ nec habent pretium vulgari æstimatione determinatum, nec constitutum lege Principis, cujusmodi sunt rara, exquisita etc. 302.

Casus aliqui, in quibus licite res vendi potest supra justum pretium. 303, etc.

Qui privatim certo scit intra paucos dies mercium copia superventura, ideoque earum pretium notabiliter diminuendum esse, potest ne pretio currenti suam merces vendere? 306. etc.

Licere necne mercandi ... pretio minoris emere ob anticipatam solutionem. 306.

Quid dicendum si credituri [illegible] ... communiter existimetur, sed nisi in particulari difficilis videatur solutio. 309.

Cum creditum [illegible] ... periculosæ solutionis possit minoris [illegible] qui nullo lucro ... damno [illegible]. ibid.

Appendix
De monopoliis.

Quid monopolium. 310.

Conclusio I.

Si subsit justa causa licitum est monopolium esse sumptum seu facto auctoritate publica, ut scilicet unus, vel pauci a Principe facultatem obtineant, ut ipsi soli aliquas merces vel in [illegible] introducere, ac vendere possint. 311.

Conclusio II.

Peccant ... mercatores, qui conventiones ineunt de vendendo ... pretio rigoroso. Sic etiam qui inter se conveniunt, ut ... merces non vendant nisi pretio summo. ibid.

Conclusio III.

Qui, ut carius suas merces vendat vi, aut fraude impediunt ne merces aliunde advehantur, laedunt justitiam et tenentur ad restituendum tum civibus, qui carius emere coacti sunt ob majorem mercium inopiam, tum mercatoribus, quos a mercibus suis in civitatem vel Provinciam introducendis prohibuerunt. 513.

Conclusio postrema.

Quando unus vel pauci tempore messis aut vindemiae emunt v.g. omne triticum aut vinum, vel maximam ejus partem sine pretio tunc currente et caritatem inducant, aliis ita aucto notabiliter pretio eas merces vendunt. ex communi sententia peccant contra justitiam et ad restituendum tenentur. 514.

Articulus ultimus.

De oneribus, quae aut emptori aut venditori imperantur.

Notio; contractus est et aliquando usurarius quoties ultra justo pretio additur emptori aut venditori onus aliquod pretio aestimabile quod nulla lenitate compensatur. ibid.

Quid contractus mohatra et an usurarius. ibid.

Quot modis pactum retrovenditionis aut redimendi apponi possit. 515

Conclusio I.

Licitum est pactum retrovenditionis in favorem solius venditoris apponere dummodo conditiones mox assignandae serventur. 516, et seq.

Conclusio II.

Pactum retrovenditionis in gratiam solius emptoris appositum quamvis in speculatione et metaphysice licitum sit, tamen in praxi tutum non est, quia solet esse usurae pallium. 518.

Quid contractus gentilitius, seu gius di rempera, et fusa ejus explicatio. ibid.

Caput IV.

De emptione et venditione in censibus

Unde nomen suum traxit census. 519

Articulus I.

Quid, et quotuplex census.

Quomodo definiatur census. ibid.

Quotuplex census. 520.

Articulus II.

De justitia census, ejusque necessariis conditionibus.

Propositio I.

Census realis sive fructuarius sive etiam pecuniarius legitimo pretio emptus per se justus est et licitus. 521.

Propositio II

Census realis perpetuus, sive irredimibilis licitus est jure naturæ. 322.

Propositio III.

Non modo licitus est census realis cum pacto redemptionis in favorem solius venditoris, de quo nullus dubitat, sed etiam census realis cum pacto ut venditor teneatur illum redimere quotiescunque emptori placuerit, in quo sunt divisi Theologi. ibid.

Propositio IV.

Ut census realis licitus sit ex jure naturæ quinque conditiones sunt necessariæ.
1ma est, ut adsit vera intentio emendi, et vendendi; 2da ut census, &c. 323.

Propositio ultima.

Census realis, sive fructuarius sive pecuniarius, sive de novo institutus, sive jam institutus emptus ab aliquo etiam jure ecclesiastico licitus est. 324.
variæ conditiones, quas S. Pius V. servandas esse statuit. 325. et sequentibus

Finis Indicis.

22.

bid.

23.

24.
25.
mentibus

TRACTATUS THEOLOGIÆ MORALIS.

TOMUS PRIMUS

DE OBIECTO DOMINII,
TUM DE RESTITUTIONE IN GENERE,
ET IN SPECIE,
SCRIPTUS

A IOANNE BAPTA DE CANDIDO
IN SEMINARIO UTINENSIS,
PROFESSORE REUERENDMO
MATTHIA CAPELARIS
DE CARNEA.

Centimetres
Inches
Farbkarte
Sachverständigen-Zubehör.de
Blue Cyan Green Yellow Red Magenta White Grey Black